Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application: MND; MNR; MNSD; MNDC; FF

Tenants' application: MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a monetary order for damages to the rental property and unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek return of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

This matter was convened on November 20, 2014, adjourned to January 7, 2015, and adjourned again to April 15, 2015. Interim Decisions were rendered on November 21, 2014, and January 9, 2015, which should be read in conjunction with this Decision.

The Tenants provided additional documentary evidence to the Residential Tenancy Branch on February 28, 2015, which was not considered because the Hearing had already commenced (on November 20, 2014) and no Orders were made granting either party to provide additional documentary evidence.

Issues to be Determined:

- Is the Landlord entitled to a monetary award for damages to the rental unit and compensation for "cost incurred due to excessive noise after 10pm"?
- Is the Landlord entitled to unpaid rent or loss of revenue for the month of July, 2014?
- Are the Tenants entitled to compensation for loss of quiet enjoyment?
- Are the Tenants entitled to return of the security deposit?

Background and Evidence

The rental unit is a basement suite in the Landlord's residence. This tenancy commenced on January 1, 2014, and ended on June 30, 2014. Monthly rent was $1,050.00, due on the first day of each month. In addition, the Tenants paid a monthly parking fee of $40.00. A security deposit in the amount of $545.00 was paid on December 2, 2013. The Landlord is holding the security deposit pending resolution of these matters.

The Tenant PL and the Landlord met for a move-in condition inspection on December 31, 2013. The Tenant PL and his agent IW met with the Landlord for the move-out inspection on June 30, 2014. A copy of the Condition Inspection Report was provided in evidence. A forwarding address was provided to the Landlord on June 30, 2014. The Landlord filed her Application for Dispute Resolution on July 7, 2014.

The Landlord provided approximately 100 pages of documents in evidence. The Tenants provided approximately 60 pages. These documents consisted of copies of e-mails, text messages, invoices/estimates, letters of reference and written statements, photographs, the tenancy agreement and Condition Inspection Report and other documents. Approximately 3 hours of oral testimony was taken over the course of the three Hearings.

The Landlord gave the following testimony on November 20, 2014:

The Landlord stated that throughout the 6 month tenancy, the Tenants made a lot of noise, which disturbed her sleep because the Tenants' bedroom was directly underneath her bedroom. She stated that she had many communications with the Tenants regarding noise after 10:00 p.m. She stated that she had to move to a smaller bedroom which was quieter, but it was too small to fit her king sized bed. The Landlord purchased a smaller mattress and she seeks to recover the cost of the mattress from the Tenants.

The Landlord testified that on March 2, 2014, she came home to two oil stains in her driveway, which were left by the female Tenant's car. She stated that she sent a text message to the Tenants and asked them not to park on the driveway. She stated that she was advised to use dishwashing detergent on the fresh oil spill, so she went out to get some and when she returned, the Tenant's car was parked over the spill. The Landlord said that she asked the Tenant to move her car and that the male Tenant verbally abused her, calling her a "nit picky fucking bitch". The Landlord testified that the stain came up after "2 – 3 scrubs"; however, one of the Tenants' cars leaked three more times onto the driveway, causing her to repeatedly scrub the stains away. The Landlord stated that she had a conversation with the Tenants about how the tenancy

wasn't working out and that the parties were considering a mutual end of tenancy agreement.

The Landlord testified that everything "calmed down" after May and that she thought the Tenants would stay.

The Landlord stated that the Tenants provided notice that they were ending the tenancy effective June 30, 2014, but that she did not receive the notice until June 2, 2014. The Landlord stated that she posted the rental unit for rent on two popular web sites on June 4, 2014. The Landlord testified that the Tenants wanted 24 hours' notice of any showings, which the Landlord complied with, but the Tenants were not cooperative with showings. She testified that the female Tenant locked herself in the bathroom on June 18, 2014, and the male Tenant was pacing around, which made the prospective tenants nervous. It also meant that the prospective tenants could not view the bathroom. The Landlord stated that the rental unit did not show well because the blinds were shut, which made the rental unit dark, and that the rental unit was messy. The Landlord stated that she had "6 to 8 showings" and was able to rent the rental unit effective August 1, 2014.

The Landlord stated that the Tenants left deep cuts in the kitchen counter which could not be repaired or partially replaced because the countertop is discontinued.

In addition to the above, the Landlord made the following claims against the Tenants:

- The Tenants did not clean the carpet at the end of the tenancy;
- The Tenants owe $14.00 for utilities;
- The Tenants damaged a wall by hanging a chin up bar;
- The Tenants cracked a baseboard in the rental unit; and
- The Tenants damaged two bi-fold doors in the rental unit.

The Landlord seeks a monetary award, calculated as follows:

Cost of new mattress	$1,220.80
Cost to professionally clean carpet and compensation for permanent yellow stain ($193.20 + $40.00)	$233.20
Unpaid utility bill	$14.00
Cost to patch and paint wall where chin-up bar was hung (1 hour labour @$20.00 + $10.00 supplies)	$30.00
Cost to remove, replace and paint 4 feet of baseboard and patch and paint drywall (2 hours of labour @$20.00 per hour and $20.00	$60.00

supplies)	
Repair and re-alignment of two bi-fold doors	$40.00
Landlord's labour cleaning up the stains on the driveway (4 hours @ $20.00 per hour + cost of soap)	$91.05
Loss of revenue for the month of July, 2014	$1050.00
Estimate for replacement of countertop	$1,150.52
TOTAL	$3,959.57

The Tenants and their agent IW gave the following testimony on January 7, 2015:

IW stated that the Tenants received a text message about noise after 10:00 p.m. but that it didn't seem to be a real issue, and that they tried not to flush toilets or slam doors after 10:00 p.m. IW stated that the rental unit was poorly soundproofed. He stated that the Tenants received no caution notices or warnings about excessive noise.

The Tenants submit that NS offered to clean up the oil spill and pay for a degreaser, but that the Landlord would not allow her to do so. NS stated that she did not park on the driveway after March 4, 2014, until March 6, 2014, when the leak was fixed.

NS stated that the Tenants do not dispute that the carpet needed to be cleaned, but that they are disputing the amount the Landlord is seeking. NS stated that the Condition Inspection Report confirms that there were stains on the carpet at the move-in inspection. She stated that she believes $119.00 was a "more appropriate" amount to pay based on an advertisement for carpet cleaning which was provided in evidence.

The Tenants dispute that they damaged a stove burner. They submitted that the burner was discoloured from heat and use, and that it was not dirty.

The Tenants testified that they attempted to pay the outstanding utility bill, but that the Landlord refused to accept payment.

The Tenants denied damaging the baseboards and suggested that perhaps the damage was caused by the carpet cleaners that were hired by the Landlord.

The Tenants testified that they gave the Landlord verbal notice on May 20, 2014, that they were ending the tenancy effective June 30, 2014. They stated that the Landlord gave them instructions to leave their written notice on the front porch, which they did. The Tenants testified that the Landlord had advertised the rental unit for rent on March

2, 2014, available for April 1, 2014, even though the parties had not reached a mutual agreement to end the tenancy.

The Tenants disputed that the rental unit was messy and stated that they cooperated with showings. They stated that the Landlord even left them a note after one of the showings, thanking them for how neat the rental unit looked. NS stated that the Landlord did not complete a Condition Inspection Report with the Tenants at the end of the tenancy.

The Tenants denied the Landlord's allegation that PL intimidated the Landlord after the oil spill.

The Tenants agreed that they were responsible for the damages caused by the chin-up bar.

The Landlord gave the following testimony on January 7, 2015:

The Landlord stated that the Tenants were not being truthful. She stated that NS did not attend at the move-out condition, but that PL and IW did attend. The Landlord testified that PL and IW refused to sign the Report, so she filled it out by herself.

The Landlord testified that $80.00 of the cost of shampooing the carpet was for scotch-guarding. The Landlord stated that there is a clause in the tenancy agreement that provides that the carpets be cleaned by a specific professional company and that scotch-guard be applied.

The Landlord stated that there was a one inch gap at the bottom of the bi-fold doors which should not have been there.

The Landlord stated that she did not accept the Tenant's payment of the utility bill because "we had a lot of items and I didn't want to be nickled and dimed".

The Landlord testified that she did not want the Tenants to use the wrong product on the oil stains because she was afraid of damaging the pavement. She stated that the Tenants acknowledged responsibility for the stains and that they told her they would pay for the cost of clean-up.

The Landlord stated that she advertised the rental unit for rent in March because NS had told her that they were leaving. The Landlord stated that a week later, the Tenants said they wanted to stay, so she pulled the ad. She stated that the Tenant's notice to end the tenancy dated May 20, 2014, was not a valid notice because it was not signed by the Tenants.

The Landlord stated that the tenancy agreement provides for no noise after 10:00 p.m. She stated that she never heard toilets flushing, but the Tenants slammed doors.

PL and IW gave the following testimony on April 15, 2015:

PL stated that the Landlord violated the Tenants' right to quiet enjoyment of the rental unit and harassed the Tenants for the term of the 6 month tenancy. He stated that the Landlord's dogs barked and that the Landlord had a "desire to dictate our behaviour" by sending numerous text messages and e-mails about:

- cardboard not being stacked properly in the recycling;
- garbage bags and the garbage can lid not being placed properly;
- instructions not to open or close closet doors at night;
- falsely accusing the Tenants of driving over sprinkler heads; and
- voicing concern and demanding to know about who was visiting the Tenants.

PL stated that the Landlord photographed the Tenants' cars without their knowledge. He stated that the Tenants felt that their privacy was being violated by the Landlord.

PL testified that the Tenants were unaware that NS's car was leaking oil until the Landlord advised them on March 2, 2014. He stated that he washed the "top layer of oil" away and offered to bring a degreaser from his workplace.

PL testified that the Landlord gave the Tenants a mutual agreement to end the tenancy on March 3, 2014, but that it was effective on March 31, 2014, which didn't give the Tenants sufficient time to find alternate accommodation. The Tenants felt that the Landlord should compensate them for moving out earlier than the term of the lease and did up a different mutual agreement on March 5, 2014, effective June 30, 2014. The Tenants' agreement also included a clause that the last month would be rent-free. The Landlord returned the Tenants' agreement form with a line through it and the word "inappropriate" written across it.

PL testified that the Tenants felt so harassed by the Landlord's constant phoning at the beginning of the tenancy that they asked her to send text messages instead. PL stated that the Landlord constantly sent the Tenants text messages, so they asked the Landlord to send e-mails rather than text messages.

PL stated that this tenancy was the most stressful tenancy he had ever experienced and that a pre-existing medical condition was exacerbated, causing him to increase his medication. He submitted that NS felt so harassed by the Landlord that she took to sleeping at her parents' house.

PL stated that the Tenants wished to amend their claim against the security deposit to $396.00, rather than $545.00, in order to allow for a reasonable cost of cleaning the carpets ($119.00) and the cost of the damages from the chin-up bar ($30.00).

The Tenants seek a monetary award, calculated as follows:

Return of a portion of the security deposit (545.00 - $149.00)	$396.00
Full reimbursement of rent for lack of quiet enjoyment (6 months x $1,050.00)	$6,300.00
TOTAL	$6,696.00

The Landlord gave the following testimony on April 15, 2015:

The Landlord began her testimony by going over her claim again.

The Landlord stated that her dogs don't bark. She stated that she works from home and therefore her dogs have to remain quiet so as not to disturb her and her clients. The Landlord testified that the Tenants never mentioned to her that her dogs were barking.

The Landlord submitted that the Tenants did not provide sufficient evidence to support their claim for damages. She stated that the Tenants did not provide copies of their communications with the Landlord. The Landlord stated that the Tenants were "picking and choosing texts" and "not providing a complete picture". She stated that she communicated with the Tenants in a "gentle and professional way" throughout the tenancy.

The Landlord stated that she was concerned about the Tenants' visitor's car because it was still in the driveway after the Tenants left in the morning. The Landlord stated that she did not care who the Tenants' guests were, but that she felt concern about an unknown car being in the driveway.

The Landlord stated that IW's testimony and the written statements that the Tenants provided in evidence were "hearsay". She submitted that the Tenants' claim was in retaliation because the Landlord claimed that there were noise issues. She stated that she was sleep-deprived because the Tenants made unreasonable noise after 11:00 p.m. at night. The Landlord disputed that the rental property was not properly sound insulated. She stated that the rental property was built in 2005 and that she is the original owner. The Landlord testified that she has never had issues with previous tenants.

The Landlord stated that the Tenants didn't sign the Condition Inspection Report at the end of the tenancy, and therefore did not participate fully in the inspection.

IW provided the following reply on April 15, 2015:

IW stated that he and PL did not sign the Condition Inspection Report because the carpet cleaning had not yet been done. He stated that the Landlord said they could meet again and complete the Condition Inspection Report once the carpets had been cleaned, but that she completed the Report on her own and gave the Tenants a copy later.

IW submitted that the Landlord could have provided her own copies of e-mail correspondence between the Tenants and the Landlord.

Analysis

It is important to note that when the Landlord expressed concern about IW giving testimony and concern about hearsay, I explained to the parties that the rules of evidence do not apply. Section 75 of the Act provides:

Rules of evidence do not apply

75 The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a) necessary and appropriate, and

(b) relevant to the dispute resolution proceeding.

I also advised the parties that I would weigh the oral testimony and documentary evidence provided by both parties, taking into consideration the source of the testimony or evidence and whether or not the source was impartial or hearsay.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) of the Act provides that a landlord or tenant who claims for compensation for damage or loss must do whatever is reasonable to minimize the damage or loss.

Before an arbitrator can make an order under Section 67 of the Act, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss

or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on both parties to prove their claims against each other.

- Is the Landlord entitled to a monetary award for damages to the rental unit and compensation for "cost incurred due to excessive noise after 10pm"?

The Landlord's application to recover the cost of a new mattress from the Tenants is dismissed. I find that the Landlord provided insufficient evidence that she gave the Tenants due notice that they significantly interfered with or unreasonably disturbed the Landlord after 10:00 p.m. or that the Tenants failed to comply with a material term of the tenancy agreement which was not corrected the situation within a reasonable time after the Landlord gave written notice to do so. The parties' testimony was at odds and I find that there was insufficient substantive independent evidence with respect to this portion of the Landlord's claim. In any event, if the Landlord believed that the Tenants unreasonably disturbed her, or breached a material term of the tenancy agreement, the Landlord's remedy would have been to issue a Notice to End Tenancy under Section 47 of the Act.

I allow the Landlord's claim with respect to carpet cleaning in the amount of **$193.20**. Tenants are required to clean the carpets at the end of a tenancy of more than 6 months, and the tenancy agreement provides that the carpets be professionally cleaned at the end of the tenancy. I dismiss the Landlord's claim for compensation for the stain. I find that the Landlord did not provide sufficient evidence to support the monetary amount claimed.

The Landlord's claim for unpaid utilities in the amount of **$14.00** is allowed. The tenancy agreement provides that the Tenants' portion of the utilities is 40%, and I find that the amount claimed is substantiated by the evidence.

The Tenants agree that they are responsible for the damage to the wall where a chin-up bar was hung. They also agreed with the amount claimed, and therefore I allow this portion of the Landlord's claim in the amount of **$30.00**.

I find that there was insufficient evidence of the cost of materials for replacing 4 feet of baseboard or that the Tenants caused damage to the baseboard and this portion of the Landlord's claim is dismissed.

I find that there was insufficient evidence to support the Landlord's claim of $40.00 for the cost for repairing and realigning two bi-fold doors. The Landlord provided a receipt

for materials in the amount of $3.39 plus tax, but I find that there was insufficient evidence that the damage was a result of anything more than normal wear and tear. This portion of the Landlord's claim is dismissed.

The Tenants acknowledged the first oil leak and that they had agreed to pay for the cost of removing the stain. The Tenants provided a copy of the repair bill for the Tenants' car and I find that there was insufficient evidence of the latter three oil spills. Therefore, I allow the Landlord's claim with respect to the cost of the soap and one hour of labour in the total amount of **$31.05**.

The Landlord is seeking compensation for replacement of the countertop. A copy of the estimate was provided in evidence. The photographs provided by the Tenants do not show any marks on the counter; however, the Landlord's photographs (which are taken closer up and at a different angle) do show what appear to be knife cuts on the counter. The countertop is 10 years old. The Tenants would be not be expected to pay the price of a new countertop, but might be required to pay a lesser amount for the materials and the cost of labour if the Landlord could prove that the Tenants caused damage beyond reasonable wear and tear. I find it probable that the marks on the countertop were caused by using the countertop as a cutting board for food preparation; however, I find insufficient evidence that the Tenants caused the damage. There have been a number of tenants in the rental unit over the past 10 years and the damage is not easily visible. This portion of the Landlord's claim is dismissed.

- Is the Landlord entitled to unpaid rent or loss of revenue for the month of July, 2014?

I accept the Tenants' testimony that they told the Landlord on May 20, 2014, that they intended to end the tenancy effective June 30, 2015. I also accept the Tenants' testimony that the Landlord instructed them to put their notice in writing and where to place it. I find that the Landlord was deemed to receive the Tenants' due notice to end the tenancy before the last day of May, 2015. However, the notice is not "signed" by the Tenants. Instead, the Tenants' names are printed on the notice. Section 52 of the Act requires that a notice must be signed by the party issuing the notice. However, I find that the Landlord accepted the Tenants' notice to end the tenancy and acted on it. She gave the Tenants 24 hour written notice of her intent to show the rental unit to prospective tenants and had previously advertised the rental unit for rent without due notice to end the tenancy from the Tenants.

I find that the Landlord provided insufficient evidence that the Tenants did not cooperate with showing the rental unit, or that the rental unit was messy. The Tenants provided a copy of a note from the Landlord thanking them for keeping the rental unit tidy.

This portion of the Landlord's claim is dismissed.

The Landlord has established a monetary award, calculated as follows:

Cost to professionally clean and scotch-guard carpet	$193.20
Unpaid utility bill	$14.00
Cost to patch and paint wall where chin-up bar was hung (1 hour labour @$20.00 + $10.00 supplies)	$30.00
Landlord's labour cleaning up the stain on the driveway (1 hours @ $20.00 per hour + cost of soap)	$31.05
TOTAL	**$268.25**

Pursuant to the provisions of Section 72(2) of the Act, the Landlord may deduct her monetary award from the security deposit. I Order that the Landlord return the balance of the security deposit in the amount of **$276.75** to the Tenants forthwith.

- Are the Tenants entitled to compensation for loss of quiet enjoyment?

The Tenants seek a monetary award in the equivalent amount of full rent paid for the period of the tenancy for loss of quiet enjoyment of the rental unit. A tenancy may be devalued due to the Landlord's breach of Section 28 of the Act; however, the Tenants had use and occupancy of the rental unit and I find that they would not be entitled to full refund of the rent paid. With respect to any compensation for loss of quiet enjoyment, I find that both parties contributed to the unhappiness of this tenancy. The Tenants did not seek to end the tenancy early under the provisions of Section 45(3) of the Act, and therefore I find that they failed to mitigate their loss. This portion of their claim is dismissed.

- Are the Tenants entitled to return of the security deposit?

The Landlord has been provided with a monetary award, which has been set off against the security deposit. The Tenants are hereby provided with a Monetary Order for the balance of the security deposit in the amount of **$276.75**.

I decline to award recovery of the filing fee to either party.

Conclusion

The Tenants are hereby provided with a Monetary Order in the amount of **$276.75** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 12, 2015

Residential Tenancy Branch