Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing

This hearing was scheduled in response to the landlord's application for dispute resolution, in which the landlord has requested compensation for damage to the rental unit, damage or loss under the Act to retain the security deposit and to recover the filing fee from the tenants for the cost of this application for dispute resolution.

The tenants have applied for dispute resolution requesting compensation for damage or loss under the Act; return of double the security deposit and to recover the filing fee from the landlord for the cost of this application for dispute resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties each confirmed receipt of the others hearing documents and all evidence within the legislated time limits.

The tenants said that the landlords' hearing documents were dated October 10, 2014, not September 10, 2014. The tenants stated that the application was not made within 15 days of the August 31, 2014 end of tenancy.

I explained that notes made by Residential Tenancy Branch (RTB) staff indicated that the landlord's application had been made on September 10, 2014 via a Service BC office. The application was submitted to the RTB as evidence, in error. The Kelowna RTB office date stamped the documents on October 10, 2014. The hearing documents were created by the RTB on October 14, 2014. The landlord paid for the application on September 10, 2014; a receipt confirming payment was before me.

Residential Tenancy Branch Rules of Procedure provide:

2.6 Point at which an application is considered to have been made
The application for dispute resolution has been filed when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or at a Service BC office.

Therefore, as the landlord applied and paid the required fee on September 10, 2014 I find, pursuant to section 2.6 of the Rules of Procedure, that the application was made on that date.

The landlord's claim reflected damage to the rental unit only.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $779.96 for damage to the rental unit?

Are the tenants' entitled to return of double the security deposit or is the landlord entitled to retain the deposit?

Are the tenants entitled to compensation in the sum of $3,120.00 for the loss of quiet enjoyment?

Background and Evidence

The parties agreed that the tenancy commenced on May 1, 2013. A tenancy agreement and addendum were signed. Rent was $1,150.00 and a security deposit of $575.00 was paid. A copy of the tenancy agreement and addendum was supplied as evidence.

A second tenancy agreement was signed September 15, 2013, adding additional co-tenants. The parties agreed that the terms remained the same as the original agreement; the security deposit was transferred and a new condition inspection report was not completed.

The tenancy did not include the provision of laundry.

The addendum included a term referencing the lawn mower:

> *"The lawn must be kept mowed and in reasonable condition. Landlords have provided a working lawn mower however the landlords will not replace the lawn mower should it stop working nor will they cover the cost of repairs."*
>
> (Reproduced as written)

A pet deposit was paid; it has been returned to the tenants.

The parties agreed that a move-in condition inspection report was completed. The tenants said they did not receive a copy of the inspection report until they were given the landlord's hearing documents in October 2014. The landlord said he did give the tenants a copy of the report but could not recall when or how it was given. Initially the landlord said he gave it on the day the report was completed at move-in, but then could not recall the details due to the passage of time.

There was no dispute that the tenancy ended with proper notice, effective August 31, 2014. A move-out inspection report was completed. The inspection was described as somewhat contentious. The tenants refused to sign the report. A copy of the inspection report was given to the tenants with the hearing documents, sent via registered mail on October 14, 2014 and received by the tenants on October 17, 2014.

The landlord has made the following claim:

Bathroom ceiling repair	$450.00
Cleaning, lawn – landlord time	240.00
Light bulbs and cleaning supplies	89.96
TOTAL	$779.96

The tenants have made the following claim:

Double the security deposit	$1,150.00
Loss of quiet enjoyment	1,150.00
Verbal abuse	600.00
Lawn mower repair	170.00
Loss of use of washing machine	50.00
TOTAL	$3,120.00

The landlord testified that they became aware of damage caused to the bathroom ceiling in July 2013. A July 15, 2013 email sent to the tenants set out the details of a visit to the property by the landlord. At this time the landlord found the rental unit was mostly clean and in good condition. The landlords' email raised the issue of the downstairs bathroom, a problem the landlord pointed out that could have been avoided if the landlord had been notified. A co-tenant had told the landlord that the shower head had been spraying onto the ceiling for about one and one-half months, which resulted in destruction of the drywall on the ceiling. The landlord made a basic repair to the ceiling but it requires repair by a skilled dry wall installer. A July 29, 2014 estimate of $450.00 provided by a professional repairperson has been supplied as evidence. Photographs of the damage and repair made by the landlord were supplied as evidence. The repair has yet to be made.

The landlord provided a set of photographs to demonstrate the state of the home at the end of the tenancy. The upper portions of the kitchen cabinets and the top of the fridge were not cleaned, some cobwebs were found in bedrooms, the stove exhaust was dirty, outlets, some wall areas, window ledges, a window, blinds and baseboards were not cleaned. The tenants had not replaced the furnace filter as the landlord had asked. Filters had been supplied.

The landlord supplied a letter from an individual who witnessed the move-out condition inspection on August 31, 2014. The witness submits the general condition of the home was dirty and only a minimal amount of cleaning had been completed. When they inspected the bathroom that had water damage the landlord gave the tenant a copy of the estimate for repair and the tenants became upset and threatened to leave. As the inspection proceeded the witness writes that the tenants became more agitated. The tenants did clean a portion of the oven during the inspection. When the tenants were told the landlord would use part of their deposit to pay for the water damage and additional cleaning if the house was not cleaned further the male tenant became agitated and refused to review any more of the report or to sign the report. The tenants then left the home.

The landlord completed seven hours of cleaning and charged $20.00 per hour. This time covered the kitchen cabinet tops, grease and dirt, main floors, walls, light fixtures, windows, baseboards, doors and to replace the lightbulbs.

The landlord has claimed an additional five hours of time to remove garbage bags left in a shed, for additional cleaning of the blinds and window coverings, vacuuming, cleaning crown moldings, mowing the lawn and weed removal. Pictures supplied by the landlord showed garbage outside of the home and grass that was, in some areas, tall and not mowed, burned out bulbs and areas requiring cleaning. A photo taken of a blind showed it covered in dust.

A copy of the move-out inspection report indicated areas of the home that had been sufficiently cleaned and others that had not.

Invoices for light bulbs and cleaning products were supplied. The majority of the cost claimed was for lightbulbs. The move out inspection report indicated that 9 bulbs were burned out. The receipts appear to show purchase of 15 bulbs. During the hearing the landlord said they thought they had replaced 12 bulbs.

The tenants responded that they left the home in good condition and clean. The male tenant said he was away when the damage occurred to the bathroom ceiling. The tenants stated that the co-tenant who talked to the landlord was not the person who lived in the lower level of the

rental unit. The tenants acknowledged that the damage could have been caused by that other co-tenant. The tenants said that a contractor came to the door to look at the ceiling and said there was no need to repair the ceiling and that it was the landlord's failure to use water-proof paint that was the source of the problem.

On July 7, 2014 the tenants issued a letter to the landlord that included notice to end the tenancy. This letter referenced items that required attention, including the washing machine, an upper room door that was missing and another not working, baseboard in bathroom missing, bathtub required sealing and the basement ceiling.

The tenants believed the landlord was going to attempt to keep their deposit so while the landlord waited outside of the home to enter to complete the inspection the tenants took a number of photographs. The photographs and a CD of pictures were submitted as evidence. The tenants supplied pictures taken at the start of the tenancy and at the end. The landlord confirmed they viewed the CD.

The photos taken by the tenants at the start of the tenancy show some areas, such as shelves, that were not cleaned and refuse in the yard that was eventually removed by the landlord. The tenants said that the appliances were not rolled out at the start of the tenancy and that the landlord is expecting cleaning beyond that completed prior to the move-in. The tenants did complete some additional cleaning to the oven during the move-out inspection but no other touch-up cleaning was requested by the landlord. When the tenants left, all of the bulbs were working.

The tenants had not seen the move-in inspection report and said that when the move-out inspection was to begin the landlord had already made notations on the report. The male tenant scanned the report when it was given to him and refused to sign it. The tenant said that throughout the tenancy the landlord said everything was fine and not to worry.

Later on the day of the inspection the tenants emailed the landlord to confirm they believed all areas of the home except the bathroom ceiling were in good condition. The tenants continued to disagree that the ceiling damage was their responsibility. The tenants reiterated the contractor had said the ceiling damage was not the responsibility of the tenants and that it was in fine condition requiring no further repair. The email included the tenant's forwarding address. The landlord confirmed receipt this email.

The landlord responded that the tenants had been selective in their picture-taking, not showing the areas that had not been cleaned. The landlord referred to a letter supplied by their new tenant confirming that she moved into the rental unit on September 1, 2014 and that the landlord was present cleaning and doing yard work. The new tenant submits the landlord was completing work on the house from the time the new tenant arrived at 2:30 p.m. until five or six p.m. The new tenant saw the landlord replacing light bulbs, washing blinds, windows and cupboards. There was a lot of dust on surfaces.

The tenants then made submissions in support of their claim for loss of quiet enjoyment since the start of the tenancy.

The tenants said that from the start of the tenancy the landlord had been trying to sell the home. People repeatedly came to view the rental unit in the absence of a realtor or the landlord. The tenants always allowed people to view the home, even though proper notice of entry was not given by the landlord. Toward the end of June to August 10, 2014 the tenants told the landlord they would not allow viewings without a realtor. Some showing occurred after 8 p.m.

On July 1, 2014 the tenants emailed the landlord asking that no further private showings of the house occur and that the agent should have a key lock-box. The tenants also informed the landlord that the washing machine was broken. The tenants did not provide dates of any entry by the landlord, realtor or other person who viewed the home. The tenants said they had refused to leave a key outside for use by people wanting to view the home.

The tenants said that early in the tenancy they reported a leak in the roof; water had come into the bedroom. The landlord completed a repair to the roof. At some point in 2014 the tenants reported a leak into the upper level bathroom. The landlord sent a roofing company to the property. Two workers went onto the roof and a 3rd person asked for entry to the home. The tenants allowed that person into the home but had not been given prior notice by the landlord.

The tenants alleged the landlord verbally abused the tenant on one occasion near the end of the tenancy. On another occasion the tenants said the landlord swore at the female tenant.

The tenants said they did not have even one week of peace during the tenancy and that the landlord was rude. The landlord did not respond to the tenants' only request made in June 2013 that the bedroom and bathroom roof leaks be repaired.

The tenants confirmed they signed a tenancy agreement and addendum that did not include laundry service and that established the lawnmower was for their use while it worked.

The landlord responded that all showings of the home took place with the consent of the tenants. On only one occasion a person viewed the home without an agent present and there was never a showing after 8 p.m. Proper advance notice was given for the contractor and the tenants let him into the home.

The landlord supplied a statement signed by his real estate agent, declaring he would make arrangements with the tenants to show the home.

The roof did leak in 2013 and the landlord patched and repaired the roof. Toward the end of the tenancy the leak reoccurred and the roof has since been replaced.

The landlord said they have never verbally abused the tenants.

The addendum signed by the parties indicated that the mower would not be replaced.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean at the end of a tenancy. From the evidence before me I find that that with the exception of the blinds, windows and shelves the unit was left reasonably clean. From the evidence before me I find that the lawn had not been cut by the tenants. The photographs submitted by the tenants showed a unit that was in good condition. The photographs supplied by the landlord focused on several areas

that had not been cleaned; however, on the balance I find that the rental unit had been cleaned to a level that was very close to that expected when a tenant vacates. However, I find that it would have taken considerable time to clean the blinds and complete the yard work.

Therefore, I find that the landlord is entitled to reduced compensation in the sum of $100.00 for cleaning and yard maintenance. The balance of the claim for cleaning and maintenance is dismissed.

From the evidence before me I find that the ceiling was damaged by a co-tenant. Which co-tenant caused the damage is not relevant as all co-tenants are jointly and severally liable for any damage. There was no evidence before me that the paint used by the landlord was the cause of the damage. I find it is more likely, on the balance of probabilities, that it was the failure of the tenants to report the shower head problem and the repeated spraying of water onto the drywall that caused the damage. Therefore, I find that the landlord is entitled to compensation in the sum quoted for repair. The landlord has a right to have the ceiling repaired by a person who is skilled in drywall application.

The condition inspection report indicated that 9 light bulbs were burned out at the end of the tenancy. Therefore, I find the landlord is entitled to the cost of cleaning products and lightbulbs claimed, less $25.00 for the extra bulbs purchased.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*
>
> *(a) reasonable privacy;*
> *(b) freedom from unreasonable disturbance;*
> *(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
> *(d) use of common areas for reasonable and lawful purposes, free from significant interference*

The tenants alleged that they suffered a loss of quiet enjoyment as the result of repeated entry of potential purchasers, leaks into the bedroom and bathroom and verbal abuse by the landlord. There was no evidence before me that the tenants refused entry to potential purchasers, in an attempt to minimize the loss they are claiming. There was also no evidence that the tenants gave the landlord any reason to believe showings of the home was causing a loss of quiet enjoyment. It was not until the July 7, 2014 notice to end tenancy was given that the tenants asked the landlord to arrange for the keys and to give 24 hours' notice. There was no indication that the tenants felt showings were disrupting their right to quiet enjoyment.

When a landlord attempts to sell a property they have the right to show the unit. Access to the property is achieved in accordance with section 29 of the Act. In this case the tenants agreed to entry; thus meeting the standard set out in the legislation. There was no evidence before me that the landlord ever entered the home in breach of the legislation.

From the evidence before me I find that the landlord did make a repair to the roof in 2013 and that he had a roofing company attend the home after the report of a leak in 2014. There was no evidence before me that the landlord failed to respond to requests for repair made by the

tenants. In fact the landlord is required by section 32 of the Act to make repairs, which includes having assessments completed by professionals.

If the tenants had felt their right to quiet enjoyment was being impeded throughout the tenancy section 7 of the Act required them to mitigate the claim they have made. The tenants did nothing to minimize their claim, allowing it to build throughout the tenancy.

I find that the tenants' accusations of verbal abuse are unsubstantiated. The tenants had no independent corroboration in support of this allegation.

Laundry service was not provided as a term of the tenancy agreement. The washing machine was provided for the tenant's use but was not a service included with rent. Therefore, once the machine broke down the landlord was not required to make any repairs.

The lawn mower was given to the tenants for their use, but the addendum clearly set out the terms for use. The tenants were aware that if the machine failed the landlord would not replace it. RTB policy (#1) requires tenants in single family homes to care for the lawn and to weed. The tenants would then have been at liberty to purchase a lawn mower or to have an outside service care for the lawn.

Therefore, I find that the tenants have failed to prove they suffered a loss of quiet enjoyment and that the claim is dismissed.

As laundry and a mower were not included as terms of the tenancy agreement I dismiss the claim related to these items.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Bathroom ceiling repair	$450.00	$450.00
Cleaning, lawn – landlord time	240.00	100.00
Light bulbs and cleaning supplies	89.96	64.96
TOTAL	$779.96	$614.96

The landlord applied claiming against the security deposit within 15 days of August 31, 2014. Therefore, I find that the claim against the deposit was made as required by section 38 of the Act and that the landlord may retain the deposit in partial satisfaction of the claim.

As the landlord's application has merit I find that the landlord is entitled to recover the $50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of $89.96. In the event that the tenants do not comply with this Order, it may be served on the tenants and filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that caulking and furnace maintenance is not the responsibility of a tenant.

Conclusion

The landlord is entitled to compensation for damage to the rental unit.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

The tenant's application is dismissed.

This decision is final and binding and 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: June 17, 2015

Residential Tenancy Branch