



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC MNSD O FF
 MNSD FF

Preliminary Issues

Upon review of the Tenants' application for dispute resolution and the description of their claim submitted into evidence, I accept that the Landlord had previously been informed of the Tenants' intent to seek compensation for reduced rent or as described by the Tenants "discounted rent" due to the remediation work conducted on the rental unit during the tenancy.

Based on the aforementioned I find the Tenants had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention to be awarded reduced rent for the remediation period. Therefore, I amend the Tenants' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt cross applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed on January 16, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on June 17, 2015 seeking to obtain a Monetary Order for the return of a portion of their security deposit and to recover the cost of the filing fee from the Landlord for their application.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an

opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony. The Tenant, D.M., testified that he would be representing both Tenants and as such D.M. was the only Tenant who submitted oral evidence. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

Each person affirmed that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a monetary award?
2. Have the Tenants proven entitlement to a monetary award?

Background and Evidence

The undisputed evidence was the Tenants entered into a fixed term written tenancy agreement that began on March 10, 2013 and switched to a month to month tenancy after September 09, 2014. Rent of \$1,640.00 was due on or before the tenth (10th) of each month and on February 9, 2013 the Tenants paid \$820.00 as the security deposit. No condition inspection report forms were completed in the presence of the Tenants at move in or at move out. The Tenants vacated the property by November 21, 2014.

The Landlord received an email on October 30, 2014 advising her that the Tenants were ending their tenancy effective November 21, 2014. She submitted that she told the Tenants she would need one full month's notice to end the tenancy.

The Landlord testified that although the parties conducted a walk through no reports were completed because the Landlord did not have a form with her. She argued that the Tenants interrupted her and were talking loud so she left because she did not feel safe. The Landlord completed a condition form on November 23, 2014 in absence of the Tenants.

The Landlord testified that the Tenants failed to pay the rent and utilities owed and they left the rental unit with some damage and requiring cleaning. A 10 Day Notice to end

tenancy was issued and served upon the Tenants on December 09, 2014. As a result the Landlord now seeks monetary compensation as follows:

- 1). \$1,640.00 Rent for November 10 – December 9, 2014. The Landlord asserted that the keys were not returned to her until November 23, 2014. She tried to re-rent the unit; however, she could not do so until after she cleaned and renovated the rental unit. A friend of the Landlord's stayed in the unit for the period of January to March 2015.
- 2). \$235.65 Unpaid municipal utilities as per the invoice submitted into evidence. The Landlord asserted that this invoice was sent to the Tenants via email when it was received.
- 3). \$55.00 for the half the cost to purchase a new power head for the built in vacuum. The Landlord submitted that the vacuum was original from when the house was built in 1987; however, the power head was in full working order at the start of the tenancy.
- 4). \$50.00 for damage caused to the fridge knob (handle) during the tenancy. The Landlord testified that the fridge was new in December 2013. She argued that the handle broke off due to improper use by the Tenants. This handle could not be repaired which resulted in the Landlord having to purchase another fridge.
- 5). \$50.00 for damage caused to the corner of the wall by a window which is located about 1 meter above ground in the family room. The claim is for labor and materials which the Landlord's husband supplied.
- 6). \$187.95 for carpet cleaning as per the invoice dated November 25, 2014 submitted into evidence. The Landlord submitted that the carpet was "very very dirty" and was not cleaned by the Tenants at the end of their tenancy. She argued that the carpet cleaning was not required as the result of the flood remediation work which had been performed in the kitchen and two bathrooms.
- 7). \$600.00 for the damage caused to the hardwood floor. The Landlord argued that the oak floor was new in November 2011 and had no scratches at the start of the tenancy. She submitted that the Tenants damaged the floor during their tenancy leaving it with deep scratches. The Landlord stated that the damaged floor boards cannot be replaced without replacing the entire floor. She said she was told she would have to refinish the floor at a cost of \$1,000.00 or replace the entire floor. Photographs of the floor were submitted into evidence by the Landlord.
- 8). \$100.00 for the Landlord's costs to drive around and find the Tenants' new address.
- 9). \$40.00 to compensate for the Landlord's witness's time when they attended with the Landlord to serve the Tenants the 10 Day Notice to end tenancy.

The Tenant did not dispute the Landlord's claim for \$238.65 in unpaid utilities plus \$300.50 in unpaid discounted rent which leaves a balance of \$280.00 owed to him from

his \$820.00 security deposit. He asserted that he had previously asked the Landlord to deduct these amounts from his deposit.

The Tenant argued that he entered into a verbal agreement with the Landlord that they would pay only 50% of the rent owed for the eleven day period in November 2014 as compensation for having to live in the rental unit when the flood remediation work was being completed. He argued that they were without the use of the two bathrooms and the kitchen during that time which caused a hardship on his family.

The Tenant argued that the vacuum power head was old as it was installed in 1987 when the house was built. He argued that they had multiple problems with it during their tenancy and the Landlord did some work on it. He argued it was working fine when they moved out.

The Tenant confirmed that the fridge had been replaced in December 2013 and the handle did break during their tenancy. He argued that he had attempted to replace the handle; however, he was told it could not be replaced. He asserted that this was a common problem with that fridge and it breaking is normal wear and tear.

The Tenant disputed the claim for the damaged wall by the window citing that the window was original from 1987 and did not have handles on it. He argued that they had complained there was cold air coming in through that window and when they complained that room was cold the Landlord gave them some insulation.

The Tenant confirmed that they did not have the carpets cleaned at the end of their tenancy. He argued that there were pre-existing stains when they moved into the rental unit. He asserted that the carpet condition became dirtier with the contractors walking on the carpets when they were gaining access to the bathrooms during the flood remediation.

The Tenant argued that the scratches on the hardwood floor were pre-existing at the time they moved into the rental unit. He argued that the Landlord had zoomed in her camera to make it look like the scratches were larger when in fact they covered only 2 slabs.

The Tenant disputed the Landlord's claims for her costs and her witness' costs for conducting their business. He submitted that he had wanted to show the Landlord his new home after they had purchased it so he drove and the Landlord followed him in her own car. The Landlord stayed and visited with him at this new home for over two hours that day so she knew where they lived.

The Tenant testified that he had knowledge that the Landlord sold the rental property after she listed it for sale as soon as they moved out. He pointed to the letter submitted in his evidence, which all the neighbours signed and speaks to the care he took in maintaining the Landlord's property.

In closing, the Landlord confirmed that the property has sold and title transferred sometime in April or May 2015. She confirmed that they did discuss a discounted rent and she denied entering into a verbal agreement. Rather, she simply agreed to allow them to stay in the rental unit until after the pregnant women gave birth.

The Landlord confirmed there was noise during the remediation work which occurred from September 24, 2014 until they moved out on November 21, 2014. She argued that the work was not performed every day. The Tenants had full use of the kitchen and she would agree that their use of the washrooms would have been limited during that time.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding Payment for November 10 – December 09, 2014

Section 44(1)(a) of the *Act* stipulates that a tenancy ends when a tenant gives notice to end the tenancy in accordance with section 45 of the *Act*.

Section 45 (1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

7(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Regarding Damage or Loss

Section 32 (3) of the *Act* provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Policy Guideline 40 provides, in part, the normal useful life of the following building elements:

Hardwood floor	20 years
Appliances – Refrigerator	15 years
Central electrical / mechanical systems such as vacuums	15 – 20 years

Policy Guideline 1 stipulates that the tenant is responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Regarding Reduced Rent

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Regarding the Monetary Award

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Landlord's Application

I accept the undisputed evidence that the Tenants gave improper notice on October 31, 2014 to end their tenancy effective November 21, 2014, in breach of section 45 of the Act. I further accept that the Tenants failed to pay their November 10, 2014 rent in accordance with their tenancy agreement in breach of section 26 of the Act. These breaches caused the Landlord to suffer a loss of rental income for the entire period. Accordingly, I find there sufficient evidence to grant the Landlord's claim for unpaid November 10, 2014 rent in the amount of **\$1,640.00**.

The Landlord's claim for unpaid utilities was undisputed and agreed upon by the Tenants. Accordingly, I grant the claim for unpaid municipal utilities in the amount of **\$238.65**.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40* as listed above.

In response to the Landlord's claim of \$55.00 for a share of the cost to replace the broken vacuum power head, the estimated useful life of such mechanical equipment would be between 15 and 20 years. The undisputed evidence was the existing power head was original from 1987 and was therefore, 28 years old. Accordingly, I conclude the power head was past its normal useful life and of no value for replacement cost. Furthermore, I conclude there was insufficient evidence to suggest the powerhead quit working due to negligence on the part of the Tenants; therefore, the claim is dismissed, without leave to reapply.

Upon review of the photographic evidence I do not accept the Tenants' assertion that the handle on the fridge broke due to normal wear and tear. There was insufficient evidence to prove the Tenants' argument that this was a known problem with this style of fridge. Rather, there was undisputed evidence that this was a brand new fridge purchased in December 2013. Notwithstanding the Tenants' submission that they attempted to repair the fridge, it is without a doubt that the Landlord suffered a loss due

to the Tenants' actions which caused the fridge handle to break. The fridge handle was not repaired as required by sections 32 and 37 of the *Act*. Accordingly, I grant the Landlord's claim of **\$50.00**.

Regarding the claim of \$50.00 for wall repairs in the corner by the window, I find there was insufficient evidence to prove the damage was caused by the Tenants' neglect. I make this finding in part, as it is not uncommon for moisture to form or accumulate around windows and the surrounding drywall. It was undisputed that the window was over 28 years old and there was cold air coming in around the window which would turn into moisture once it reached the warm air inside the room. Furthermore, in absence of a written move in condition report there was insufficient evidence to prove that the damage was not pre-existing. Accordingly, the claim for wall repairs is dismissed, without leave to reapply.

In response to the claim for carpet cleaning I do not accept the Tenants' submissions that the carpets were soiled from the remediation workers. Rather, I favored the Landlord's submissions and the Tenants' acknowledgement that the Tenants failed to have the carpets cleaned at the end of their tenancy, in breach of section 37 of the *Act* and as required by Policy Guideline 1. Accordingly, I grant the carpet cleaning claim, as supported by the invoice provided in evidence, in the amount of **\$187.95**.

In the absence of evidence to prove the condition of the hardwood floor at the start of the tenancy, such as a move in condition report, and in the presence of the Tenants' disputed testimony, I find the Landlord submitted insufficient evidence to prove all of the scratches to the floor were created during these Tenants' tenancy. Accordingly, I dismiss the claim of \$600.00 for hardwood floor repairs, without leave to reapply.

In regards to the claims for the Landlord's time to find the Tenants' address and the Landlord's witness' time, I conclude that the Landlord chose to spend the time to find the Tenants and the Landlord made a personal choice to have a witness for service. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. Costs incurred due to a choice to find someone's address or a service method choice is not a breach of the *Act*. Therefore, I dismiss these claims, without leave to reapply, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Based on the above, I grant the Landlord's application in the amount of \$2,166.60 (\$1,640.00 + \$238.65 + \$50.00 + \$187.95 + \$50.00).

Tenant's Application

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the

party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

The Landlord disputed the Tenant's submission that they had a verbal agreement for a rent reduction of 50% due to the flood remediation. That being said, there was undisputed evidence that there was remediation work being conducted at times between September and November 2014.

Upon review of the submissions regarding the remediation work, I concluded there was insufficient evidence to prove the Tenants were left without the use of either washroom for a period of three straight months. In addition there was insufficient evidence to prove the Tenants were prevented from using the kitchen. Rather, I accept the Landlord's submissions that the disruptions were intermitted on various days as the work was not performed every day all day long. That being said, there was sufficient evidence to prove the Tenants suffered a loss of quiet enjoyment of the rental unit in breach of section 28 of the *Act*.

Based on the above, and in absence of evidence to prove the full extent of loss which resulted from the flood remediation work, I find the Tenants of entitled to nominal damages. Pursuant to section 67 of the *Act*, I award the Tenants nominal damages of \$100.00 for each of three months the work was performed for a total award of **\$300.00**.

Regarding the Tenants' request for the return of the balance of their security deposit, the undisputed evidence was the Tenants did not provide the Landlord with their forwarding address in writing. Therefore, I find that at the time the Tenants' filed their application for dispute resolution the Landlord was under no obligation to return to the deposit and the Landlord filed her own application to retain the security deposit in accordance with the *Act*. Accordingly, the security deposit disbursement will be offset against any award granted to the Landlord as listed below.

The Tenant has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$50.00**, pursuant to section 72(1) of the *Act*.

Based on the above, I grant the Tenants' application in the amount of \$350.00 (\$300.00 + \$50.00).

Offset Monetary Awards

I conclude that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset each other as follows:

Landlord's award	\$2,166.60
LESS: Security Deposit \$820.00 + Interest 0.00	<u>-820.00</u>
Offset amount due to the Landlord	\$1,346.60
LESS: Tenants' award	<u>-350.00</u>
Offset amount due to the Landlord	<u>\$ 996.60</u>

Based on the above, I hereby order the Tenants to pay to the Landlord the offset amount of \$996.60, pursuant to sections 67 and 72 of the *Act*.

Conclusion

The Landlord was partially successful with her application and was awarded monetary compensation of \$2,166.60 which was offset against the Tenant's \$820.00 security deposit, leaving a balance owed to the Landlord of \$1,346.60.

The Tenants were partially successful with their application and were awarded \$350.00 monetary compensation.

The monetary awards were offset against each other leaving a balance owed to the Landlord of \$996.60, which the Tenants were ordered to pay.

The Landlord has been issued a Monetary Order in the amount of **\$996.60**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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: October 13, 2015

Residential Tenancy Branch

