



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP, FF, MND, MNR, MNDC

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order for damage to the unit, site or property, for unpaid rent or utilities, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. The tenants have filed an application seeking the return of personal property. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement as claimed?

Background, Evidence

Tenants Application

The tenants' testimony is as follows. The tenancy began on September 1, 2014 and ended on June 28, 2015. The tenants were obligated to pay \$1600.00 plus utilities per month in rent in advance and at the outset of the tenancy the tenants paid an \$800.00 security deposit and a \$800.00 pet deposit; both of which have been returned to the tenant. The tenant stated that she wants the landlord to return her "sim cards" for her satellite dish, HD cables and her washer and dryer. The tenant stated that there were discussions with the landlord about selling the washer and dryer to him, but she decided against it and wants them returned.

The landlord stated that because the unit was left dirty and damaged he did not return the washer and dryer. The landlord stated that he had discussed purchasing the washer

and dryer via text message and would still like to buy them as of today's hearing. The landlord stated that he doesn't even know what a "sim card" is and would have no use for it. The landlord stated that when the cable company came to re-connect the cable service they removed all cables for the satellite and put them in a box. The landlord stated that the tenant came and picked up the box and he has no idea what she did with those items.

Landlords Application

The Landlord is applying for the following:

1.	Irrigation Blow Out	\$75.00
2.	Irrigation Pump replacement – Parts and Labour	\$582.00
3.	Refinish Dining Room Table – Parts and Labour	\$145.27
4.	Cassidy Upholstery	\$201.60
5.	Suite Cleaning	\$175.00
6.	Budget Carpet Care	\$364.81
7.	District of Summerland – Utility Bill	\$364.68
8.	garbage to dump	\$75.00
9.	Shaw Cable – Hook up	\$83.61
10.	Repair door frame	\$170.00
	TOTAL	\$2236.97

The landlord stated that due to the tenants' actions he incurred the above costs and seeks a monetary order for those costs. A detailed background, analysis and finding will follow in the Analysis portion of this decision.

Analysis

I first address the tenants' application as follows. In relation to the "sim cards" and HD cable, I accept the testimony of the landlord. He was clear, concise and compelling. I accept that he returned those items in a box to the tenant and somewhere during the transaction it may have been misplaced by the tenant but I am satisfied that the landlord is not in possession of those items.

The landlord did acknowledge that he still has the washer and dryer and wishes to purchase it from the tenant. The tenant does not want to sell them. I order the landlord to return the washer and dryer to the tenant. The tenant is to make arrangements with the landlord to pick up her washer and dryer at a date and time that is convenient for both parties.

I address the landlords' application and my findings as follows.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

1. Irrigation Blow out -\$75.00

The landlord stated that the irrigation system requires it to be blown out each fall and then shut down. The landlord stated that "he thinks" the male tenant turned on the system after it had been shut down requiring the serviceman to attend and clean it out again.

The tenant disputes this claim. The tenant stated that "so many people came and went it's impossible to know who did what". The tenant stated that she was sure her husband did not touch it.

The landlord has only given testimony based on speculation and not fact; accordingly I dismiss this portion of the landlords' application due to the lack of supporting evidence.

2. Replace Irrigation Pump, labour and materials - \$582.00.

The landlord stated that he "assumes" that the tenant turned on the system incorrectly causing it to fill with sand and gravel causing damage to the pump and requiring its replacement. The landlord stated the damage occurred in the spring of 2015.

The tenant disputes this claim. The tenant stated that her husband was away working in the spring and that as she stated in the previous claim, there is "no way of knowing who did what".

The landlord has only given testimony based on speculation and not fact; accordingly I dismiss this portion of the landlords' application due to the lack of supporting evidence.

3. Dining Room table – labour and materials \$145.27

The landlord stated that the tenant left a dining room table outside of the house causing damage. The landlord stated that the table was 25 years old. The landlord stated that he found someone to sand the table and apply six coats of lacquer to repair it.

The tenant disputes this claim. The tenant stated that the table was under a cover protected from the elements and that the table was left in the same condition that she received it.

The landlord is seeking \$145.27 to repair the dining room table. The landlord stated that the table was 25 years old and was stained and damaged.

Policy Guideline 40 addresses the “useful life” of building elements. An Arbitrator may award an amount based on the pro-rated amount of “useful life” remaining on an item if it is damaged or needs replacing. Dining room tables are not listed in the table. If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer.

Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation for a particular item claimed. The landlord has not provided any information as to the “useful life” of this table or a supporting document such as a condition inspection report to provide the condition of this table; I therefore cannot award an amount due to the insufficient evidence before me. I dismiss this portion of the landlords' application.

4. Cassidy Upholstery - \$201.60

The landlord stated that the dining room chairs had broken slats on them that required repairs. The landlord stated that the chairs were in good condition when given to the tenant. The chairs were also 25 years old.

The tenant disputes this claim. The tenant stated that she informed the landlord in September 2014 that the chairs had damage and that she would store them in the garage for him.

As stated in the previous claim, the landlord has failed to provide supporting documentation to show a change in the condition of the chairs at the start of the tenancy versus the condition at the end of the tenancy, if any. Based on the insufficient evidence before me, I dismiss this portion of the landlords' application.

5. Suite Cleaning - \$175.00

The landlord stated that the unit was left in an untidy manner that required the landlord to hire a cleaner at \$25.00 per hour x 7 hours. The landlord submitted a receipt for this claim.

The tenant disputes this claim. The tenant stated that the unit was left cleaner than when she received it and submitted photos to dispute the landlord's claim.

Based on the disputing testimony and photos of the tenant, the landlord has not satisfied me of this claim and I therefore dismiss this portion of the landlord's application.

6. Budget Carpet Care - \$364.81

The landlord stated the tenant didn't clean the carpets at move out.

The tenant disputes this claim. The tenant stated that she only stayed for 10 months and that she didn't have to clean the carpets. The tenant stated that she had a dog.

Policy Guideline 1 clearly outlines that when a tenant moves out, they may be expected to steam clean or shampoo the carpets, regardless of the length of tenancy if they had a pet or smoked in the unit.

Based on the above I find that the landlord is entitled to \$364.81.

7. District of Summerland Utilities - \$364.68.

The landlord stated that the tenant has not paid the utilities as per the tenancy agreement. The tenant stated that she did not pay the utilities as claimed.

Based on the acknowledgment of the tenant and the supporting documentation from the landlord, I find that the landlord is entitled to \$364.68.

8. Garbage to the Dump - \$75.00

The landlord stated that the tenants left behind so much garbage and rubbish; it required him to hire someone to take it to the dump. The landlord had that person give

testimony that all of the garbage was personal items of the tenants and not the landlords’.

The tenant disputes this claim. The tenant stated that the bags were full of yard trimmings and that she was doing the landlord a favour by cleaning up the yard.

Based on the witness testimony and the supporting receipt, I accept the version of the events as provided by the landlord and find that he is entitled to \$75.00.

9. Cable hook-up – \$83.61

The landlord stated that the home was serviced by regular cable and that the tenant wished to have satellite service instead. The landlord stated that he told the tenant she was free to use what she wanted as long as she returned the unit to him with cable service.

The tenant disputes this claim. The tenant stated that the landlord said “ ya sure, do whatever you want”.

After considering both parties testimony I prefer the landlords’ version. It was clear and logical. The landlord stated on several occasions “as long as it was returned to me in the same manner as I gave it to them”. Based on the above and on a balance of probabilities, I find that the landlord is entitled to \$83.61.

10. Repair door frame - \$170.00.

The landlord stated that he thinks the dog damaged the door frame that required repairs.

The tenant disputes this claim. The tenant stated that the dog didn’t do any damage.

It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The landlord is entitled to the recovery of his \$50.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Budget Carpet Care	\$364.81
District of Summerland	\$ 364.68
Garbage to dump	\$75.00
Cable hook up	\$83.61
Filing Fee	\$ 50.00
Total:	\$938.10

The landlord has established a claim for \$938.10. I grant the landlord an order under section 67 for the balance due of \$938.10. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord is to return the washer and dryer to the tenant at a time that is convenient for both parties.

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 21, 2015

Residential Tenancy Branch

