



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, FF
 MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for cause; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and the landlord was accompanied by legal counsel. The parties each gave affirmed testimony and provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing, counsel for the landlord advised that the tenants have moved out of the rental unit and the landlord's application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy

agreement, and more specifically for moving expenses, loss of work and loss of enjoyment of the rental unit?

Background and Evidence

The landlord testified that this 1 year fixed term tenancy began on June 28, 2013 and ended on July 28, 2013. Rent in the amount of \$2,200.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The rental unit is the upper 2 floors of a house and the landlord resided in the basement suite. A copy of the tenancy agreement has been provided.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,000.00. The parties had been to a dispute resolution hearing wherein the landlord was ordered to repay the tenants double the amount.

The landlord served the tenants with a notice to end the tenancy and the tenants moved out without the landlord's knowledge, and without paying the outstanding utility bills. The landlord has provided a copy of a hydro bill dated July 19, 2013 for charges totalling \$191.00 for a 62 day period from May 17 to July 17, for which the landlord claims \$105.05. Also provided is a natural gas bill dated July 16, 2013 for charges totalling \$25.00 and the landlord claims \$16.66 as against the tenants. The tenancy agreement provides that the tenants were to pay for 2/3 of each of those utilities.

No move-in or move-out condition inspection reports were completed with the tenants present, however the landlord completed a check-list of each room after the tenants had vacated. The landlord has provided a 2-page document entitled "Expense List" and the landlord makes the following claims as against the tenants:

1. Lawn Cutting Dates: July 9, 16 and 25 (3 X \$40.00); garden weeding June 18, 2013 (1 X \$20.00); Total \$140.00 + \$7.00 Tax; Total \$147.00 (Receipt provided);
2. Wall repairs (patch, sanding, and painting) \$25.00 per hour X 4.75 hours; total \$120.00 (Receipt provided);
3. House Cleaner; \$25.00 per hour X 8 hours; Total \$200.00 (Receipt provided);
4. Toilet tank lever \$16.30 (Receipt provided);
5. Front Door Lock Re-Keyed; Total \$89.90 (Receipt provided);
6. Replacement of 2 garage door openers; Total \$67.20 (Receipt provided);
7. Upper Carpet cleaned; Total \$152.36 (Receipt provided);
8. Gas Utility Bill (Equal Payment Plan monthly); Total \$16.66;
9. BC Hydro Billing Date June 28 20-13 – August 1, 2013; 62 days per billing cycle/33 days total X 69 billed daily = 2/3 of billing; Total \$105.05;
10. Replacement of front door mat; Total \$50.35;

11. Replacement of Expired Fridge Water Filter; Total \$55.99 (Receipt provided);
12. \$20.00 for gas to friend to take to dump (no receipt provided);
13. Storage Unit Rental \$4.59 per day @ 35 days; Total \$160.65;
14. Vehicle rental June 25 2013; total \$135.69 (Receipt provided);
15. Replacement of master bath toilet seat; \$55.99;
16. Remove and replace gouged floor piece from high heeled shoes, refinish multiple scratch's left by tenant; Total \$1,150.; and a quote has been provided;
17. Income loss November 2013 (RTB hearing) 4 hours; October, 2015 (RTB Hearing) 4 hours; Totalling 8 hours of missed wages $\$47.50 \times 8 = \380.00 ; and
18. Recovery of the filing fee;

for a total claim of \$2,868.09.

The landlord also testified that the tenancy agreement provides that the tenants are to complete the yard work. The tenants failed to do so, and the landlord hired someone on 3 separate dates during the tenancy to mow the grass and once for weeding, and has provided a copy of a receipt in the amount of \$147.00. A photograph of the lawn has also been provided which the landlord testified was taken 2 days before the tenancy began, however others show that the tenants didn't take care of the lawn. The landlord had asked if they were going to mow and they said they didn't have to, so the landlord hired someone.

The landlord also claims costs for repair of a damaged door frame in the bathroom, which was not that way at the beginning of the tenancy. Also, something was spilled in the bathroom which cannot be removed, and there is damage to the molding. The rental unit was last painted in January, 2013 prior to the commencement of this tenancy.

The landlord has provided photographs showing black around moldings and around the door, and gouges in the hardwood floor were left at the end of the tenancy which were not damaged at the commencement of the tenancy. The hardwood has an "L" shape scratch, and red stain on the carpet could not be removed.

The tenants left makeup and perfume, nail clippings and toothpaste in the master bathroom and smudges on all glass. Garbage was left on the floor and a toothpaste stain on the front of the cabinet. In the master closet the photographs show dirt on the glass, shower door, mirror, and garbage, hangers and price tag stickers on the walls. Paint was chipped and gouged on the master window seat, along with more of the sticky stuff.

The landlord had asked the tenants to keep the washer door open to prevent mold, and the landlord took a photograph every night. At the end of the tenancy the door was closed and smelled bad.

The landlord also testified that the tenants left garbage behind in the garage when they vacated the rental unit, and has provided photographs which the landlord testified were taken on the night of July 28, 2013. Also provided are photographs of pink sticky stuff all over the light switches and other places. The landlord testified that a cleaning person was hired who did a walk-through of the rental unit with the landlord on the 28th and the photographs were taken then. The landlord was in the rental unit two weeks before the tenants moved in and the sticky stuff wasn't there and there was no damage. The previous tenants left the rental unit clean and undamaged, with no garbage left behind and got their security deposit back. The cleaner spent 8 hours cleaning after the tenancy ended, and the landlord paid \$200.00 for that service.

The cleaner noticed that the toilet lever was broken, and the landlord had to replace that, having to flush it from inside the tank until it was replaced.

The tenancy agreement also provides that the tenants will change the locks to the rental unit upon vacating, but didn't do so and the landlord claims \$89.90. The tenants didn't return the keys.

The tenants also took the garage door openers and the landlord replaced 2 at a cost of \$67.20.

The tenancy agreement also provides for professional carpet cleaning upon vacating, however the tenants did not have the carpets cleaned, and photographs depict staining on the stairs and landing. Also provided is a receipt from a carpet cleaning company dated June 11, 2013 as evidence that the carpets were professionally cleaned at the commencement of the tenancy.

When the tenants moved out, they took the front door mat and the landlord paid \$50.35 to replace it with a cheaper one.

The landlord further testified that the Additional Terms and Conditions to the tenancy agreement provide for: "1) Tenant is responsible to maintain all light fixtures, and water filters when needed," but the tenants did not replace the water filter in the refrigerator.

The landlord paid someone \$20.00 for gas for taking the garbage left all over the yard and garage to the dump which the landlord claims against the tenants.

The landlord also claims storage costs of \$160.65 because the tenants wanted the whole garage so the landlord had to store all of her stuff in a storage unit, which is on a month-to-month basis so the landlord had to pay for an extra month after the tenants vacated, as well as vehicle rental in the amount of \$135.69.

The tenancy agreement also provides that the tenants would replace the toilet seat at the end of the tenancy, which they did not do and the landlord claims \$55.99.

Planks in the floors had to be replaced due to scratches, and the landlord claims \$1,150.00.

The landlord also claims loss of wages for this hearing and the previous hearing in November, 2013.

The first tenant (HM) testified that no move-in or move-out condition inspection reports were completed by the parties and photographs provided by the tenants, which were taken on July 28, 2015, show no damage to walls.

The tenants protected the floors by putting down paper and plastic and the tenant denies damage, and testified that she was always very careful about it. Photographs of the rental unit with paper and plastic on floors and stairs have been provided.

The tenants only left 2 garbage bags at the end of the tenancy but the cans were full and only needed to be put in the cans after the garbage service attended, and the tenants left both remotes for the garage doors inside the garage.

The toilet lever was not functioning when the tenants moved in. It was not broken during the tenancy. Further, a new toilet seat was not required; it was fully functional at the end of the tenancy. The tenants agreed in the tenancy agreement to replace it after a year's lease, not after one month of the tenancy.

Similarly, the tenants do not believe that having the carpets professionally cleaned after a 1 month tenancy was necessary, and the carpet wasn't dirty at the end of the tenancy.

The tenant further testified that she took the rental unit keys because the landlord was going to replace them anyway. That term in the tenancy agreement was only the landlord's preference.

The tenant denies taking any door mat, and testified that the refrigerator filter should last a year, not one month.

With respect to the landlord's claim for storage, the landlord did not have the garage vacant as agreed. Photographs have also been provided which the tenant testified are all items belonging to the landlord.

The tenant testified that the house was cleaned, vacuumed and paper and plastic were placed on the floors on June 28 and July 1. Everything was all clean before the tenants left.

With respect to the tenants' claim, the tenant testified that the tenants knew from the first day of the tenancy it was not going to be right. It was never their plan to move into a 3000 square foot home for one month. Copies of text messages have been provided, and the tenant testified that the landlord was always harassing the tenants with loud music, nasty text messages. The landlord acted a bit crazy, very belligerent and caused the tenants' family stress. The tenants didn't want to be there; yelling and screaming in the basement suite about killing the tenants. Police were called but found it was not a direct threat. The landlord also turned music on loud and then went out, leaving the music to irritate the tenants.

The tenants have provided a Monetary Order Worksheet listing the following claims:

1. 4 invoices for containers, delivery, rental \$964.25;
2. Labour for movers \$2,856.00;
3. Loss of work \$3,500.00;
4. Gasoline while looking for a new home rental \$200.00;
5. Stress and loss of enjoyment \$2,500.00; and
6. Recovery of the filing fee.

The tenants paid \$3,500.00 in total to move in and out of the rental unit, and looked at about 7 or 8 places to rent.

The second tenant (RM) testified that professional movers were hired to ensure that the landlord's home was cared for. On the first day, the landlord was coming out and into her vehicle, rolled up the window and drove away. The tenants found the landlord to be unapproachable and stand-off-ish, and the tenants couldn't communicate with her. The tenants didn't unpack or remove protective covers from the floors during the tenancy.

The landlords called the tenants pigs and seemed to have a high level of anxiety. The tenant spoke to neighbours who said that the previous tenant moved out within 30 days. The landlord yelled excessively in the lower level of the home which stressed out the tenants within the first 2 days and they knew they had to move.

The tenants have been very fair, their children are well behaved, and no mess was left behind; the tenants left the home in the same condition at the end of the tenancy as it was at the beginning of the tenancy.

The tenants have also provided a copy of a 1 Month Notice to End Tenancy which is dated June 30, 2013 and contains an effective date of vacancy of August 1, 2013. The second page of the form has not been provided and therefore, no reasons for issuing it are evident. Also provided are copies of text messages exchanged between the parties, a journal setting out dates of incidents, and notes that the tenants state in their material were left by the landlord.

The tenants' written submissions indicate that the landlord did not give the tenants a copy of any utility bills prior to receiving the evidence for this hearing.

Counsel for the landlord submitted that at the last hearing, the Arbitrator found that the tenancy ended on July 29, 2013 and the tenant's application for this hearing was filed on October 1, 2015, more than 2 years since the tenancy ended.

Analysis

Firstly, with respect to the landlord's application, I have reviewed the tenancy agreement and I find that the landlord has established a claim for the natural gas bill in the amount of \$16.66. With respect to hydro costs, I have reviewed the bill and cannot determine how the landlord arrived at a claim in the amount of \$105.05. The bill is \$191.00 for a 2 month period, the tenants were there for 1 month, so divided by 2 equals \$95.50. Two thirds of that equals \$63.66, and I find that the landlord has established that amount of the claim for hydro.

Where a party makes a claim against another party for damages, the onus is on the claiming party to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

Further, the *Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy, and absent such reports that can be relied upon due to the fact that none was done at

move-in and the landlord completed the move-out condition inspection report in the tenants' absence, it is difficult to determine the condition.

I have reviewed the tenancy agreement which states that the tenants will maintain the grounds and gardens of the premises, including keeping existing gardens weed free and lawn maintained weekly. The tenants did not dispute that the yard work was not done during the one-month tenancy, and I find that the landlord has established a claim in the amount of \$147.00.

With respect to wall repairs, I have reviewed the photographs provided by the landlord and the tenants. Both parties testified that they were taken on July 28, 2013, and none show any damage other than scuff marks. The landlord testified that the laundry room door frame was gouged and chipped, however I am not satisfied that any wall damage claimed by the landlord isn't pre-existent.

With respect to costs for cleaning the rental unit after the tenancy had ended, I have reviewed the invoice from the cleaner which states 8 hours of cleaning at \$25.00 per hour. The photographs of the landlord are taken at a much more close-up view than those of the tenants, however the landlord spoke of sticky stuff throughout the rental unit several times during her testimony. A tenant must leave a rental unit reasonably clean at the end of a tenancy, not in a pristine condition the landlord may want for re-renting or selling; that is a landlord's responsibility. I also consider the tenants' photographs depicting a lot of belongings of the landlord, which is not disputed by the landlord. The invoice of the cleaner is very vague, only saying \$25.00 per hour and 8 hours, but doesn't indicate anything else. The tenant testified that the rental unit was cleaned throughout and left in exactly the same condition at move-out that it was at move-in. Where it boils down to one person's word over another, the claim has not been proven.

With respect to the toilet tank lever, the tenant testified it didn't work from the beginning, and again, in the absence of any evidence to the contrary, the claim has not been proven.

With respect to the front door lock, one of the tenants testified that the landlord was going to replace them anyway so the tenants didn't leave them behind. The tenant referred to Residential Tenancy Branch Policy Guideline #1, and it states that a tenant is required to return keys at the end of a tenancy and a landlord is required to change them if a new tenant so requests. I find that the landlord has established a claim for \$89.90.

With respect to the landlord's claim for replacement of 2 garage door openers, the tenant testified that they were both left at the rental unit. Judging by the amount of belongings in the garage that belong to the landlord, I am not satisfied that the landlord has been able to locate them which I find is not as a result of the tenants' failure to comply with the Act or the tenancy agreement, and the landlord's claim in that regard is dismissed.

With respect to carpet cleaning, the tenancy lasted 1 month. Also, the tenants' photographs show that the carpets are clean and vacuumed and the landlord's photographs show a closer up view of marks on the landing and stairs. I accept the landlord's photographs and I find that the landlord has established a claim in the amount of \$152.36.

The tenants deny taking the front door mat and there is no evidence before me that it existed at the commencement of the tenancy or its value to justify its replacement at the cost of the tenants.

The tenancy agreement provides that the tenant will replace the water filter in the fridge when needed, and the tenant testified that it ought to have lasted more than a month. I find that if it needed replacement at the end of the tenancy, it needed replacement at the beginning of the tenancy, and the landlord's claim for replacement at the tenants' expense is dismissed.

I also dismiss the landlord's claim of \$20.00 for gas. Paying a person a gratuity for taking items away without any receipt for landfill costs or a charge by a person or company who does such services is not recoverable. Further, judging by the items in the garage that belong to the landlord, I am not satisfied that any payment for removal didn't include some of the landlord's items.

With respect to the landlord's claim for storage rental, the landlord testified that the tenants wanted the entire garage so the landlord had to store her items. If that was the agreement, I find no evidence that the tenants agreed to pay for the landlord's storage locker in lieu. I find that the landlord is not entitled to storage costs from the tenants and I dismiss that portion of the claim.

Similarly, there is no evidence before me to satisfy me that the tenants ought to pay for the landlord's vehicle rental.

I also find that the term in the tenancy agreement requiring the tenants to replace the toilet seat is unconscionable and I dismiss that portion of the landlord's claim.

With respect to floor damage, both tenants testified that they were very careful about the floors and laid paper and plastic to protect them and have provided photographs of that, and one of the tenants testified that although there may have been a scratch, there was no damage. I have reviewed the photographs provided by the parties and again note that the landlord's photographs are close-ups in comparison to the tenants' photographs. No damage appears in the tenants' photographs, both parties claim they took the photographs on the same day, and in the circumstances, it again boils down to one person's word over another. I cannot conclude that the damage was not pre-existent, and the landlord's claim must be dismissed.

Loss of wages is not a claim that is recoverable by a landlord with respect to a tenancy. Hearing time is part of a landlord's cost of doing business as a landlord.

With respect to the tenants' application, the tenant testified that the tenancy ended on July 28, 2013 and counsel for the landlord submitted that a finding in the previous hearing was made that the tenancy ended on July 29, 2013. The landlord filed the application for dispute resolution on May 14, 2015 and the tenants filed their application for dispute resolution on October 1, 2015. The *Residential Tenancy Act* specifies that:

- 60** (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.
- (2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).
- (3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

In other words, since the landlord's application was made on May 14, 2015, which is within the 2 years specified, the tenants are not barred from making an application in respect of a dispute with the landlord even though the time period has passed because it was made before the hearing of the landlord's application.

I have reviewed the evidentiary material provided by the parties. I cannot accept the hear-say testimony of the tenant that a neighbour told him that previous tenants also

stayed only one month. However, the tenant testified that it was never their intention to move into a 3000 square foot house and only stay a month, and I accept that as pure common sense. However, in order to be successful with the claim, the tenants bear the burden of proving that the tenants had to move out as a result of the landlord's failure to comply with the *Act*. A tenant's right to quiet enjoyment of a rental unit is paramount. A tenant pays rent in order to possess a rental unit that he or she can call a home, free from unreasonable disturbance from the landlord or other occupants.

I cannot ignore the fact that the landlord served the tenants with a notice to end the tenancy for cause, however neither party has provided any evidence of the reason(s) for issuing it. The landlord testified that the tenants were served with the notice and moved out in accordance with it. I have reviewed the text messages, letters and notes provided by the parties, including a message from the landlord that states: "GFY." In today's texting society, I can well imagine it does not mean, "Goofy," and is a very inappropriate message for a tenant in a landlord/tenant relationship. Similarly, the landlord's text message stating that she couldn't wait till the end of the month because the tenants would be gone.

I find that the evidentiary material is evidence of the landlord's failure to comply with the tenancy agreement by providing the tenants with laundry facilities and the garage, and with respect to the tenants' claim of \$2,500.00 for loss of quiet enjoyment, it is clear in the evidence that the parties were not a good fit to co-exist within a single building. In the circumstances, and considering the evidence provided, I find that the landlord failed to comply with the *Act* by providing quiet enjoyment of the rental unit.

Where a tenant is required to move from a rental unit, the amount of such loss is generally based on the amount of rent payable, and since the tenancy only lasted one month, I am not satisfied that the tenants' loss has been established as any more than that, and I grant a monetary order in favour of the tenants in the amount of \$2,200.00.

With respect to the tenants' claim for loss of work, I have no evidence to justify why the tenant lost work, how the tenant is paid, how much time was lost or how much money the tenant lost. I am not satisfied that the tenants have established the 4-part test, and I dismiss that portion of the claim.

I also dismiss the tenant's claim for gasoline while looking for a new rental. Neither the amount nor the time has been proven.

In summary, I find that the landlord has established a claim as against the tenants for hydro costs in the amount of \$63.66, natural gas costs of \$16.66, \$147.00 for yard work, \$89.90 for door locks, and \$152.36 for carpet cleaning, for a total of \$469.58. I find that

the tenants have established a claim as against the landlord for moving expenses in the amount of \$2,200.00 (the equivalent of one month's rent).

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Having ordered a monetary sum as against both parties, I set off those amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,730.42.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,730.42.

This order is final and binding and may be enforced.

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: November 10, 2015

Residential Tenancy Branch

