Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF; MNDC, MNSD, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the Act for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- an "other" remedy.

The tenant's application does not detail any orders sought other than monetary remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Jurisdictional Issues

Pursuant to paragraph 58(2)(a) of the Act, I do not have jurisdiction to adjudicate claims greater than that permitted by the *Small Claims Act*, RSBC 1996, c 430. The limit is prescribed in the *Small Claims Court Monetary Limit Regulation*, BC Reg 179/2005. The current claim limit is $25,000.00.

The tenant's revised monetary order request sets out a total claim of $177,750.00:

Item	**Amount**
Disbursements	$114.00
Costs	900.00
Return of Security Deposit	400.00
Snow Removal	1,050.00
Fuel Costs	486.00
Replacement Cost of Marijuana	20,000.00
Loss of Marijuana Production	105,000.00
Health Canada Privacy Act Violation	25,000.00
Breach of Section 49	4,800.00
Libel and Slander	20,000.00
Total Monetary Order Sought	**$177,750.00**

Pursuant to rule 2.8 of the *Residential Tenancy Branch Rules of Procedure* (28 July 2014), an applicant who has a claim amounting to more than $25,000.00 may abandon part of the claim so that the balance of the claim may be heard by the Arbitrator.

The tenant has set out that he will elect to proceed and limit his claim to $25,000.00 against each of the landlords. I informed the tenant at the hearing that his total claim must be limited to $25,000.00. The tenant agreed to abandon the remainder of his claimed amount.

The tenant's application seeks compensation for libel and slander. The Residential Tenancy Branch does not have the jurisdiction consider claims arising in libel and slander.

The tenant also seeks compensation for an alleged breach of privacy under the "Health Canada Privacy Act". There is no such enactment. I believe that the tenant may be referring to the *Privacy Act*, RSBC 1996, c 373. Section 4 of the *Privacy Act* establishes that jurisdiction for torts arising under that enactment falls to the British Columbia Supreme Court. I do not have jurisdiction to consider a complaint under that enactment.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent, damages, and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlords' claim and the tenant's cross claim and my findings around each are set out below.

This tenancy began 1 September 2008. The tenancy ended 3 May 2015. Monthly rent of $800.00 was due on the first. The landlords continue to hold the tenant's security deposit in the amount of $400.00, which was collected 31 August 2008.

There was no condition inspection report created at the beginning of this tenancy.

The landlords' claim seeks compensation for costs associated with remedying mould and odor the landlords say the tenant caused. The landlords also seek three days of compensation for the tenant overholding the rental unit.

Testimony of DB

The landlord DB testified that on or about 25 February 2015, the landlords received a telephone call from their daughter asking to move into the rental unit. On 26 February 2015 the landlords issued a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) to the tenant. The 2 Month Notice set out an effective date of 30 April 2015. The tenant did not pay rent for April. The tenant did not dispute the 2 Month Notice.

At 1400 on 30 April 2015 the landlords telephoned the tenant to coordinate the condition move out inspection. The tenant said that he had not found accommodation and would not be leaving.

The landlord DB testified that the landlords' daughter, son-in-law and grandsons occupy the rental unit.

Testimony of GB

GB testified that the tenant vacated the rental unit at 1600 on 3 May 2015. The tenant told the landlords on that day that he had left the keys on the kitchen counter and the doors locked. The tenant told GB that the tenant did not need to participate in the condition move out inspection as the tenant had taken photographs.

GB testified that he entered the rental unit and smelled a strong odour of marijuana. GB testified that the carpets were dirty and had not been cleaned or shampooed. GB testified that there were mould stains on the walls and stains observed on the ceilings.

GB testified that the landlords attempted to reduce the odour by opening the windows and running fans. GB testified that the odour remained extreme. GB testified that the landlords hired a contractor to treat the rental until with an ultra violet light ozone generator. Prior to the treatment, the landlords had to wash the walls and ceiling and apply an odour sealant. The rental unit had to be repainted. The landlords did as much cleaning and painting as possible in order to reduce costs. The landlords have not claimed any compensation for the value of their labour.

The landlords testified that the carpet had to be replaced even though it was in good shape because of the odour. GB testified that mould was visible under the carpeting. The landlord GB testified that the carpet had to be replaced even though the carpet was in good shape. The landlord GB referred me to photograph A.

The landlord GB testified that there was mould behind a removable closet. The landlord GB referred me to photographs B and D. The landlord GB testified that the closet had to be sealed in order to contain an odor and showed signs that the tenant had been smoking. The landlord GB testified that the wash water turned a brown colour.

The landlord GB testified that the landlords renovated the rental unit in 2007:

- The landlords installed new carpet.
- The landlords installed new windows and drapes.
- The landlords installed a new shower.
- The landlords repainted the rental unit.
- The landlords installed new linoleum flooring.

On 19 May 2015, a contractor DS observed the odor of marijuana and saw marijuana plants in a room. I was provided with a letter from DS. The landlord GB testified that the landlords did not pay DS for providing this letter.

I was provided with a letter from the landlords' previous tenants, BG and AG, who occupied the rental unit from September 2007 to March 2008. These occupants stated that the rental unit was clean and fully renovated. The occupants stated that there were no signs of mould.

I was provided with a letter from the landlords' previous tenant, DD, who occupied the rental unit from 15 April to August 2008. That tenant sets out that there were no mould stains or odors at the end of her tenancy.

The landlord GB admitted that when the tenant began occupying the rental unit, they did not inspect underneath the carpeting. The landlord GB admitted that it is not possible to observe mould under carpeting without inspecting directly underneath.

The landlord GB denied providing the tenant with permission to take extra time to move out. The landlord GB testified that the lawn the tenant is alleged to have cared for is not on the property, but on a highway right of way. The landlord GB testified that the tenant rarely performed any snow removal and submits that there was never any agreement as to compensation for snow removal. The landlord GB testified that the tenant's driveway was on highway property.

The landlords submit that as they lawfully ended the tenancy, they cannot be responsible for any costs the tenant may have incurred as a result of the end of the tenancy. In particular, the landlords deny responsibility for the tenant's fuel costs associated with finding new housing and losses associated with the non-portability of the tenant's medical marijuana licence and exemption.

The landlord GB testified that the landlords' daughter moved into the rental unit in June 2015 and is still living at the rental unit.

Tenant's Testimony

The tenant denied doing any damage to the house. The tenant denies that his marijuana cultivation caused any of the damage to the rental unit. The tenant submitted that any damage he caused was the result of regular wear and tear. The tenant submitted that the carpets were beyond their ordinary lifespan.

The tenant testified that he had sixteen marijuana plants. The tenant testified that the plants were in the master bedroom and that he did not use any other areas of the rental unit for cannabis production. The tenant testified that the plants were tented.

The landlords claim for $1,526.73[1]:

Item	Amount
Mould Remediation Materials	$14.86
Drywall Repair Materials	25.70
Wall Odor Remediation	149.14
Carpet Replacement	878.12
Carpet Cleaning	125.00
UV Odor Treatment	255.00
Overholding	78.90
Total Monetary Order Sought	**$1526.72**

The tenant's revised monetary order (for claims within the Branch's jurisdiction) totals $132,750.00:

Item	Amount
Snow Removal	$1,050.00
Fuel Costs	486.00
Replacement Cost of Marijuana	20,000.00
Loss of Marijuana Production	105,000.00
Breach of Section 49	4,800.00
Disbursements	114.00
Costs	900.00
Return of Security Deposit	400.00
Total Claim	**$132,750.00**

The tenant has abandoned $107,750.00 of his claim.

Analysis

Landlords' Claim

The landlords claim for damage to the rental unit as well as compensation for the tenant's overholding of the rental unit.

An overholding tenant is a tenant who continues to occupy a rental unit after the tenancy is ended. Pursuant to subsection 57(3) a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit.

[1] There is a difference attributable to rounding for sales tax.

In this case, the tenant continued to occupy the rental unit until 3 May 2015. The tenant did not pay any compensation for his use and occupancy of the rental unit for that period. Pursuant to subsection 57(3) of the Act, the landlords are entitled to compensation for these three days in the amount of $77.42 ($800.00/31 days * 3 days).

The landlords claim for compensation for remediating damage to the rental unit that they say the tenant caused through his actions or neglect:

Mould Remediation Materials	$14.86
Drywall Repair Materials	25.70
Wall Odor Remediation	149.14
Carpet Replacement	878.12
Carpet Cleaning	125.00
UV Odor Treatment	255.00

Broadly, the claim is for damage as a result of mould the landlords say the tenant caused to grow and marijuana odor in the walls and carpet that the landlords say the tenant caused. The tenant denies that he caused the mould or odor.

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) states:

> The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. …

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

There is no dispute that the tenant used the rental unit to produce marijuana as permitted by his federal exemption. On balance, I prefer the landlords' testimony that a strong odor of marijuana persisted after the tenant vacated the rental unit. I find that the

most likely cause of this odor was the tenant's crop of marijuana plants. The tenant submits that a legal smell cannot constitute damage. I do not agree with this submission: compensable damage may arise from a variety of legal activities. As an unpleasant odor will affect the usability and value of a rental unit, I find that an unpleasant odor constitutes damage within the meaning of subsection 37(2) of the Act. I find that the tenant caused this odor and that the odor constitutes damage within the meaning of subsection 37(2) of the Act and, as such, the tenant has breached section 37(2) of the Act.

The landlords provided evidence that in order to remove the smell of marijuana from the rental unit it was necessary to replace carpeting in the master bedroom, wash the remaining carpeting, wash the walls with a special degreasing solution, apply an odor blocking primer and paint to the walls, and treat the unit with ozone. I find that these expense were reasonable incurred to remedy the odor damage caused by the tenant's marijuana crop. The landlords provided receipts to prove each cost.

The landlords claim for $878.12 for replacing the carpets. The landlords provided a receipt in the amount of $864.12 for the replacement cost of the carpets.[2] *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" (Guideline 40) provides me with direction in determining damage to capital property. This guideline sets out that the useful life expectancy of carpet is ten years. The landlords provided evidence that the carpet was eight years old at the time it was replaced. As such, the capital value of the carpet had depreciated by 80%. On this basis, I find that the landlords are entitled to recover 20% of the cost of the carpet replacement: $172.82.

The landlords provided receipts for washing and preparing the walls with special odor blocking primer and paint. The receipts total $149.14. Although paint is normally considered a capital cost, on the basis that the landlords were required to use special odor blocking paint and primer to remedy the odor damage, I decline to apply Guideline 40 to apportion the cost based on capital depreciation. The tenant is responsible for the full amount of the odor remediation for the walls and ceiling: $149.14.

The landlords provided a receipt to show that they paid $125.00 for carpet cleaning. I find that the landlords have proven their entitlement to the full claimed amount: $125.00.

[2] The landlords incorrectly applied PST to the labour portion of the carpet costs when setting out their claim. This explains the discrepancy between the receipt and the claimed amount.

The landlords provided a receipt to show that they paid $255.00 for ozone treatment for the rental unit. I find that the landlords have proven their entitlement to the full claimed amount: $255.00.

The landlords claim that the tenant caused mould to grow in the rental unit on a wall behind a shelving unit and under the carpet. The landlords submit that the tenant caused this damage as a result of increases to the relative humidity in the rental unit owing to marijuana cultivation. The tenant denies that he caused this damage and states that the damage may have been caused by outside water incursion.

Increases in humidity within a rental unit can occur from a variety of reasons. Mould growth on a wall can occur as a result of increased humidity, but can also occur as a result of condensation forming on colder walls. The landlords' claim that the marijuana crop caused the mould growth, but have not provided me with any evidence of the relative humidity in the rental unit or evidence that the tenant spilled water in the unit. Without more evidence, the landlords have provided insufficient evidence to show that the mould growth resulted from the tenant's conduct. On this basis, I am unable to find that the tenant caused this damage through his action or neglect. The landlords are not entitled to recover the cost of the mould remediation supplies or the cost of the drywall repair for mould.

As the landlords have been successful in their claim, they are entitled to recover the filing fee paid from the tenant.

Tenant's Claim

Broadly, the tenant claims for compensation in respect of three issues:

- costs incurred to maintain the property;
- costs associated with the termination of the tenancy; and
- costs associated with these applications.

The tenant claims for compensation in the amount of $1,050.00 for snow removal on a driveway. The landlords deny that they are responsible for this cost and state that this is not a shared driveway.

Section 32 governs tenants and landlords responsibilities to maintain a rental unit. Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit,

makes it suitable for occupation by the tenant. Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Guideline 1 provides guidance on the specific responsibilities that flow from section 32, including for snow removal:

> Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow.

The underlying principle of Guideline 1 is that tenants will be responsible for maintenance such as snow removal where those tenants are the only persons benefitting. The tenant lives in a stand-alone unit on the property. The landlords provided evidence that the area for which the tenant is claiming compensation for snow removal is not a shared driveway. The tenant did not provide any evidence that contradicts this. On the basis of the evidence available, I find that the driveway was for the sole purpose of providing access to and from the rental unit for the tenant and his guests. The driveway was not for the benefit of the landlords or other occupants. On this basis, I find that the tenant was responsible for snow removal in that area. The tenant is not entitled to any compensation from the landlords for the tenant's labour in clearing the driveway.

The tenant claims compensation for his losses associated with the tenancy ending:

Fuel Costs	$486.00
Replacement Cost of Marijuana	20,000.00
Loss of Marijuana Production	105,000.00
Breach of Section 49	4,800.00

Pursuant to subsection 49(3) of the Act a landlord may end a tenancy by providing a 2 Month Notice where:

> the landlord or a close family member of the landlord intends in good faith to occupy the rental unit…

The landlords served the tenant with a 2 Month Notice on 26 February 2015. The 2 Month Notice set out an effective date of 30 April 2015. The landlords testified that their daughter and her family are occupying the rental unit. I was not provided with any evidence to contradict this testimony. On the basis of the evidence available, I find that the landlords lawfully ended the tenancy by way of the 2 Month Notice pursuant to subsection 49(3) of the Act.

Further, the landlords' close family member (the daughter) began occupation and continues to occupy the rental unit. As the landlords carried out the stated purpose under the 2 Month Notice, the tenant is not entitled to compensation pursuant to subsection 51(2) of the Act.

The landlords lawfully ended the tenancy by way of the 2 Month Notice. Other than compensation payable under subsections 50(2) and 51(1) of the Act[3], the tenant is not entitled to any other compensation for the lawful end of the tenancy as there is no breach of the tenancy agreement, Act or regulation. The tenant is not entitled to compensation in the amount of $4,800.00 for the lawful termination of the tenancy.

As the tenancy ended lawfully, the tenant is not permitted to recover the loss of his marijuana crop, the loss of his ability to cultivate medicinal marijuana under his Health Canada exemption, or the cost of finding a new residence.

The tenant has included his expenses associated with preparing for these applications:

Disbursements	$114.00
Costs	900.00

These expenses are commonly known as "costs" and "disbursements".

Section 72 of the Act allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding recovery of costs and disbursements are provided for in court proceedings, they are specifically not included in the Act. I conclude that this exclusion is intentional.

I find that the tenant is not entitled to make any claim for compensation for the tenant's costs or disbursements. The tenant's claim for compensation for his costs and disbursements is dismissed.

Security Deposit

The tenant provided his forwarding address in writing to the landlords on 6 May 2015. The landlords made their application on 20 May 2015. The landlords' right to claim against the security deposit for damage to the rental unit was extinguished by virtue of subsection 24(2) of the Act; however, the landlords' failure did not extinguish their right to claim for other losses such as compensation for overholding.

[3] The tenant received his compensation pursuant to subsection 51(1) of the Act when he withheld rent due 1 April 2015.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. In this case, the landlords' filed their application within fifteen days. On this basis, the landlords have complied with section 38 of the Act and are entitled to retain the tenant's security deposit plus interest in the amount of $2.02 in partial satisfaction of their monetary award.

Conclusion

I issue a monetary order in the landlords' favour in the amount of $427.36 under the following terms:

Item	**Amount**
Carpet Replacement	172.82
Carpet Cleaning	125.00
Wall and Ceiling Odor Remediation	149.14
UV Odor Treatment	255.00
Overholding	77.42
Less Security Deposit and Interest	-402.02
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	**427.36**

The landlords are provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial 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 subsection 9.1(1) of the Act.

Dated: April 04, 2016

Residential Tenancy Branch