



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damages to the unit, site or property, for unpaid rent or utilities, 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.

Landlord K.R. (the “landlord”), the tenant and an agent for the tenant (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence.

Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 1, 2014 and expired on December 16, 2015. Originally, monthly rent in the amount of \$1,150.00 was due on the first day of each month and increased during the tenancy to \$1,178.75 per month. The tenant paid a security deposit of \$575.00 at the start of the tenancy which the parties agreed was resolved between the parties and was not part of the landlord’s claim as a result.

The landlords' monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid rent for December 2015	\$1,178.75
2. 2 new vertical blinds and light bulbs	\$98.49
3. Garbage removal	\$137.11
4. Cleaning inside of suite	\$173.00
5. Painting inside of suite	\$210.00
6. <i>This item was withdrawn during hearing by landlord</i>	<i>Item withdrawn</i>
7. Light bulbs, Draino	\$14.53
8. New door locks	\$34.71
9. Kitchen knobs	\$6.42
10. Tracklights, TSP and 1 more knob	\$52.90
11. Paint roller	\$7.26
12. Used fridge	\$150.00
13. ½ of hydro bill unpaid by tenant	\$120.00
14. <i>Photo costs for dispute resolution</i>	<i>\$448.00*</i>
TOTAL	\$2,631.17 <u>-\$448 for item 14</u> \$2,183.17

During the hearing, the landlords were advised that item 14 would be dismissed as there was no remedy under the *Act* for photo costs in relation to filing an Application for Dispute Resolution. Based on the above, the total reduced monetary claim of the landlord's is \$2,183.17 as described above.

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding some of the items being claimed by the landlords. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties, pursuant to section 63 of the *Act*, and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon
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	compensation to landlords by tenant
Item 2 – 2 new vertical blinds and light bulbs	\$98.49
Item 4 – Cleaning inside suite (\$115 & \$48)	\$163.00
Item 5 - Painting inside of suite	\$75.00
Item 7 - Light bulbs, Drains	\$14.53
Item 9 – Knobs for kitchen	\$6.42
Item 10 - Tracklights, TSP and 1 more knob	\$40.00
Item 13 - ½ of hydro bill unpaid by tenant	\$100.00
TOTAL	\$497.44

Evidence Regarding Remaining Items

Regarding item 1, there is no dispute between the parties that the tenant failed to pay rent for December 2015 in the amount of \$1,178.75. The parties agreed that they signed a Mutual Agreement to End Tenancy dated November 29, 2015 and with an effective vacancy date of February 1, 2017. Instead, the tenant vacated the rental unit on December 15, 2015 without paying rent for December.

Regarding item 3, the landlords have claimed \$137.11 for garbage removal. The landlords submitted a receipt for garbage removal in the amount of \$137.11 in evidence in support of this portion of their claim. The tenant disputed the garbage removal costs and stated that she was willing to clean but did not do so before placing the rental unit keys in the mailbox.

Regarding item 8, the landlords have claimed \$34.71 for new door locks which was dismissed during the hearing as the tenant returned the rental unit keys to the landlords and the decision to change the rental unit locks is the responsibility of the landlords and not the tenant.

Regarding item 11, the landlords have claimed \$7.26 for a paint roller. The landlords submitted a receipt in the amount of \$7.26 from a paint store in support of this portion of their claim.

Regarding item 12, the landlords have claimed \$150.00 to replace a broken fridge that the landlords allege was damaged by the tenant. The incoming condition inspection report indicates that the fridge was in good condition and at the end of the tenancy, it was leaking from the bottom and trays were broken inside the fridge and the fridge door

would not shut properly. The landlords submitted a copy of an advertisement from a popular website where used items including fridges are posted. While the landlord questioned the date on the copy of the advertisement of a \$150.00 used fridge, the landlord testified that the expiry date of the ad does not reflect the date it was sold, just the date the ad would expire.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As indicated above, the parties reached a mutually settled agreement on the following portions of the landlords' monetary claim:

Settlement Agreement Item Number	Agreed upon compensation to landlords by tenant
Item 2 – 2 new vertical blinds and light bulbs	\$98.49
Item 4 – Cleaning inside suite (\$115 & \$48)	\$163.00
Item 5 - Painting inside of suite	\$75.00
Item 7 - Light bulbs, Drains	\$14.53
Item 9 – Knobs for kitchen	\$6.42
Item 10 - Tracklights, TSP and 1 more knob	\$40.00
Item 13 - ½ of hydro bill unpaid by tenant	\$100.00
TOTAL	\$497.44

I will now address the remainder of the items below:

Item 1 – There is no dispute that the tenant did not pay rent for December 2015 and owes the landlord \$1,178.75 as result. I find the tenant breached section 26 of the *Act* which requires that a tenant must be rent on the day that it is due in accordance with the tenancy agreement. Given the above, I find the landlords have met the burden of proof and are entitled to **\$1,178.75** for unpaid December 2015 rent.

Item 3 – I have considered the evidence of the parties, and find that the tenant has breached section 37 of the *Act* which states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

[my emphasis added]

Based on the above, the tenant was required to complete her cleaning of the rental unit before returning the rental unit keys to the landlords. As a result, I find the amount claimed by the landlord to be reasonable and that the receipt supports the needs for garbage removal from the rental unit. Therefore, I find the landlords have met the burden of proof and are entitled to **\$137.11** for garbage removal costs.

Item 8 – As described above, this item was dismissed during the hearing as the landlords had received the rental unit keys back from the tenant and decided to change the locks which is not a cost the tenants are responsible for when the keys are returned to the landlords. This is supported by Residential Tenancy Branch Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises.

Item 11 – I have reviewed the landlords' receipt submitted for this portion of their claim in the amount of \$7.26 for a paint roller from a paint store. I have also considered that the parties reached a mutual agreement regarding item 5 which relates to painting of the rental unit. Furthermore, I have considered section 7 of the *Act* which states:

Liability for not complying with this Act or a tenancy agreement

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.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[my emphasis added]

Based on the above, I find the landlords have complied with the requirement in section 7 of the *Act* to minimize the damage or loss and I find they did this by hiring someone for a reasonable amount to paint inside the rental unit and to supply a paint roller at what I determine to be a reasonable amount. Therefore, I find the landlords have met the burden of proof and are entitled to **\$7.26** for the cost of a paint roller.

Item 12 – Based on the evidence before me and the testimony of the parties, I find that the tenant more likely than not damaged the fridge as it was indicated as “good” at the start of the tenancy. In addition, I find the landlords have complied with section 7 of the *Act* by purchasing a used fridge to lower the cost of their loss. I have reached this finding by considering that the tenant stated that the door of the fridge did not close properly and was leaking, none of which is indicated on the incoming condition inspection report. Therefore, I find the landlords have met the burden of proof and are entitled to **\$150.00** for the cost of the used fridge to replace the damaged fridge.

Item 14 – As mentioned above this item was dismissed at the outset of the hearing as there is no remedy under the *Act* for the cost of photos related to filing an Application.

As the landlords’ claim had merit, I grant the landlords the recovery of the **\$100.00** filing fee.

Monetary order – Based on the above, I find the landlords have established a total monetary claim of \$2,070.56 which is comprised of a mutual agreement of \$497.44 related to items 2, 4, 5, 7, 9, 10 and 13, \$1,178.75 for item 1, \$137.11 for item 3, \$7.26 for item 11, \$150.00 for item 12, plus the recovery of the cost of the \$100.00 filing fee. I grant the landlords a monetary order pursuant to section 67 of the *Act* in the amount of **\$2,070.56**.

Conclusion

Item 6 was withdrawn by the landlords during the hearing.

Items 8 and 14 are dismissed without leave to reapply.

The landlords have established a total monetary claim for the remaining items in the amount of \$2,070.56 as described above.

I order the parties to comply with the terms of their settlement agreement as described above pursuant section 63 of the *Act*.

The landlords have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$2,070.56 which must be served on the tenant and may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: September 9, 2016

Residential Tenancy Branch