



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed June 4, 2016 wherein the Landlord sought monetary compensation in the amount of \$4,900.00 for damage to the rental unit and unpaid rent, authority to retain the security deposit and recovery of the filing fee.

Issues to be Decided

TEXT

Background and Evidence

The Landlord testified that this one year fixed term tenancy began June 1, 2015. It was set to expire on May 31, 2016. The monthly rent was \$1,400.00 per month, payable on the 1st of the month. The Landlord received a \$700.00 security deposit and a \$700.00 pet damage deposit.

The Landlord confirmed that she did not perform a move in condition inspection report as required by the Act, although she stated that she did a "walk through" on June 4, 2015.

The Landlord testified that the Tenant moved out May 31, 2016.

On November 21, 2016, the Landlord filed a Monetary Order Worksheet wherein the Landlord sought compensation for the following:

Unpaid rent for May 2016	\$1,400.00
Replacement cost of dishwasher due to damage	\$337.35
Damage to washing machine	\$370.24
Damage to rugs	\$610.40
Damage to vacuum system	\$452.76
Damage to exterior painting	\$441.00
Damage to lawn	\$100.00
Damage to flooring	\$477.54
TOTAL	\$5,095.15

The Landlord stated that the dishwasher was so moldy, and the dishwasher was so full of food and debris that the dishwasher was not usable and was replaced. In support the Landlord submitted photos of the condition of the inside of the dishwasher. The Landlord also submitted a copy of the receipt for the dishwasher.

The Landlord stated that she paid over \$2,500.00 for the clothes washing machine and dryer. She stated that at the end of the tenancy the drain filter was not cleared and the drain pump was full of dog hair. The Landlord stated that she had to replace the drain pump at a cost of \$370.24. Introduced in evidence was a copy of the invoice for this repair.

The Landlord confirmed that she sought the replacement cost for three rugs. She stated that one rug went missing entirely and the other two were so damaged they had to be replaced. She stated that the Tenant had three dogs and a cat and the rugs were significantly damaged by her pets. The Landlord stated that she attempted to clean them, but the smell of pet urine would not come out.

The Landlord confirmed that the vacuum system required repair as a result of the Tenant's pet hair. She stated that the system was not emptied and this resulted in no flow. She claimed she was informed by the repairperson that the system had been overheating as a result of the lines being plugged. The Landlord stated that she attempted to use the vacuum system and the garage filled with smoke rendering the system inoperable. She confirmed that the \$452.76 claimed was for the replacement canister. The Landlord confirmed that the powerhead was also damaged but she has not been able to replace it due to lack of funds.

The Landlord also claimed compensation for damage to the exterior painting. She stated that the Tenant had two internet/cable services installed at the property. She claimed that the second provider sought authorization from the Tenant, who apparently showed her driver's license as proof she lived in the residence. The Landlord stated that she attempted to raise this issue with the service provider who made some repairs, but insisted it was between the Landlord and her Tenant. The Landlord claimed \$441.00 for the cost to fill and paint that portion of the house.

The Landlord also sought \$100.00 for damage to the lawn. She stated that the Tenant's dogs destroyed the lawn and that she could not afford to repair the lawn and the sprinkler system as required and only claimed \$100.00 as the cost of reseeding.

The Landlord also sought compensation for the cost to repair her flooring. She stated that the Tenant's dogs weight more than 100 pounds each and that the scratches on the floor were so significant that the hardwood flooring needs to be replaced. She stated that she was informed that the cost would be \$7.58 a square foot and that the \$477.54 represents the estimated cost to repair the hardwood in the hallway.

In response to the Landlord's claims, the Tenant testified as follows. She confirmed that she did not pay the last month's rent as the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use and she understood she was entitled to a free month's rent.

In response to the Landlord's claim for compensation for the dishwasher the Tenant claimed that it was inoperable at the start of the tenancy. She stated that she told the Landlord that every time she used the dishwasher the sink would fill up with water. She further stated that she talked to the Landlord about this and the Landlord at first stated that she would hire a plumber, and then came and simply plunged the kitchen sink and said "there, you don't need a plumber--I do this all the time". The Tenant stated that she cleaned the dishwasher with a dishwasher cleaner as well as running it with bleach.

The Tenant further stated that similarly the clothes washing machine backed up into the laundry room sink. She stated she told the Landlord about this and the Landlord did not send anyone to look at it. The Tenant confirmed that she did not clean the washing machine filter. She further submitted that the fact

both the dishwasher and clothes washing machine backed up was an indication this was a problem with the plumbing, not the individual machines.

In response to the Landlord's claims regarding the rugs the Tenant stated that she did not use the smaller rugs and left them rolled up during her tenancy. She confirmed that the larger rug was on the covered front porch and that now it is gone and she presumed the Landlord had taken in.

The Tenant stated that all the previous tenants had animals as well and any hair in the vacuum system would have been from them. The Tenant stated that she did not use the vacuum system as it did not work properly. She further stated that she had her father come and look at it because it would not work, and after 2-3 times of attempting to use it, she simply used her own. She confirmed that she did not inform the Landlord that the vacuum system did not work during the tenancy.

In response to the Landlord's claim for \$905.86 for cleaning the Tenant stated that she was opposed to this claim as she thoroughly cleaned the rental unit, stating that she was on her hands and knees cleaning. She confirmed that she did not sweep the garage because she did not want to disturb the rat feces. The Tenant also confirmed that she did not clean the inside of the oven or under the kitchen sink. She claimed that she had cleaned the cupboards and window sills contrary to the Landlord's claim.

The Tenant also stated that she had her neighbour come with her to observe the walk through. The Tenant stated that the Landlord was upset because there were four bugs in the bathtub.

In response to the Landlord's claim regarding damage to the exterior painting, she confirmed that she authorized the second service provider to install the service. She denied that she claimed being the owner. She also stated that she did not realize they were going to drill into the house.

In response to the Landlord's claim regarding the lawn, the Tenant stated that the lawn was in the same condition as when she moved in. The Tenant further stated that she kept her dogs in the backyard and that any damage to the front yard pre-existed her tenancy. The Tenant further stated that she spoke to the previous tenant who confirmed that her puppy ruined the front yard. The Tenant stated that the neighbours mowed her lawn because the Landlord refused to repair the lawnmower.

The Tenant confirmed that the Landlord came into the rental unit in April of 2016 and took photos of the rental unit.

The Tenant stated that the damage to the hallway flooring was already there when she moved in. The Tenant reiterated that the previous tenant had a large dog and they admitted to her that most of the damage done was their dog.

In reply to the Tenant's claims regarding alleged issues with the drains, the Landlord stated that she gave the Tenant the opportunity to call the plumber as she was worried about arranging for the plumbers to come with the Tenant's large dogs.

The Landlord further stated that there were two dogs that lived in the rental unit prior to this tenancy, one of which was a puppy and lived outside, the other was an old dog.

The Landlord further stated that the issues with rats arose because the Tenant never took her garbage out.

The Landlord also stated that four neighbours on the small street jumped in and helped with the lawn as they simply could not stand it anymore.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

I find, based on the evidence before me, the testimony of the parties and on a balance of probabilities as follows.

The Landlord submitted that she rented the rental home from another province and did not attend for a move in condition inspection at the start of the tenancy. In a letter dated June 14, 2016, submitted to the Branch, she writes that the Tenant was to write a "deficiency list". She then writes that she did a "walk through" with the Tenant on June 4, 2015 and that she hired a "handyman" to attend to any repairs.

The Landlord seeks compensation for unpaid rent for May 2016 in the amount of \$1,400.00. She submits that the Tenant was responsible for this month as she entered into a fixed term tenancy agreement from June 1, 2015 to May 31, 2016.

The Tenant claims she was entitled to a free month's rent as she received a 2 Month Notice to End Tenancy for Landlord's Use. A copy of the 2 Month Notice was provided in evidence and which indicated it was issued on March 28, 2016 with an effective date of May 31, 2016.

I find that the tenancy was for a fixed one year term ending May 31, 2016.

Section 51 of the *Residential Tenancy Act* provides as follows:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to the above, I find the Tenant was entitled to withhold payment of the May 2016 rent and accordingly I dismiss the Landlord's claim for rent for May 2016.

The Landlord claims compensation for repairs to the dishwasher, clothes washer and central vacuum system.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises the landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant. To be compensated for the cost of the repairs, the Landlord must prove that the repairs were the result of the deliberate actions or neglect of the Tenant.

The Landlord writes that the Tenant informed her of issues with the dishwasher and the kitchen drain and that in response she gave the Tenant the contact information for the plumber for the Tenant to make these arrangements. She submits that she was concerned about making the arrangements on her own as the Tenant had three large dogs. The Landlord further writes that when she personally attended the rental unit she plunged the drain and "small rocks came flying up thru the drain" and that the drain was cleared.

I find, based on the evidence of the parties, that the Tenant informed the Landlord of issues with the dishwasher and asked that it be addressed. I further find that it was the Landlord's responsibility to arrange the repair with a plumber, and that giving the contact information to the Tenant was insufficient. Further, I find the Landlord has failed to prove that the repairs were the result of the Tenant's actions or neglect. Accordingly, I dismiss her claim for compensation relating to the cost of repairs to the dishwasher.

The Tenant conceded that she did not clear the clothes washing machine drain filter. The Landlord claims the drain was clogged with pet hair to such an extent that the drain pump required replacement. Regular clearing of a washing machine drain filter is necessary and is the responsibility of a Tenant. As the Tenant failed to attend to this regular maintenance, I award the Landlord the sum claimed for the washing machine repair in the amount of **\$370.24**.

I accept the Landlord's evidence that the small rugs required cleaning and the large rug was missing at the end of the tenancy. The Tenant stated that the larger rug was rolled up and put on the front porch, and that she simply assumed the Landlord had come to retrieve it. The Tenant, in leaving the rug on the front porch, put it at risk of theft. There was no evidence the Tenant attended to cleaning of the smaller rugs as is required at the end of a tenancy. Accordingly, I find the Tenant is responsible for compensating the Landlord the amount claimed for cleaning and replacement of the rugs in the amount of **\$610.40**.

The Tenant claimed that the vacuum system was not working at the start of the tenancy and that she had her father come to try to repair it. She further stated that she simply used her own vacuum. I find that it was the Tenant's responsibility to inform the Landlord that the vacuum system was malfunctioning, had that been the case, and to give the Landlord an opportunity to attend to these repairs. On balance, I find it more likely that the system was functioning at the start of the tenancy and was subsequently damaged by the Tenants' pet hair. Accordingly, I award the Landlord monetary compensation for the cost of the repairs to vacuum system in the amount of **\$452.76**.

The Landlord claimed she hired three people to clean at \$20.00 per hour for a total of 42 hours. To this end she claimed the sum of \$905.86 cleaning. The Tenant claimed she cleaned the rental unit, save and except the garage and the inside of the stove.

Photos submitted by the Landlord show that the Tenant failed to clean the garage, behind the refrigerator, inside the dishwasher, and inside the oven. *Policy Guideline 1* provides that a Tenant is responsible for cleaning the stove top, elements and oven, as well as defrosting and cleaning the refrigerator, wiping out the inside of the dishwasher and cleaning behind the stove and refrigerator.

I find, based on the photos submitted and the testimony of the parties that the Tenant failed to clean the areas depicted in the photos as required. However, without further photos of the rest of the rental unit, I find the amount claimed by the Landlord for cleaning to be excessive. I award the Landlord the sum of **\$500.00**.

Residential Tenancy Policy Guideline 1 provides that, "any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition." I find that the Landlord did not authorize the installation of a second cable/internet service to the rental home. According, I find the Tenant is responsible for compensating the Landlord for the cost to repair and paint the exterior of the rental home due to the installation of this second cable and internet service line. The Tenant admitted she authorized this service and while she may not have realized at the time that the service provider was going to drill into the home, she is responsible for the damage they caused. Accordingly I award the Landlord the **\$441.00** claimed.

The photos submitted by the Landlord I award the Landlord the \$100.00 claimed for repair to the lawn. I accept the Landlord's evidence that the Tenant failed to care for the lawn as required, and that as a result neighbours attended to mowing. The photos submitted by the Landlord confirm the condition of the lawn

at the end of the tenancy and as such I award the Landlord compensation for the cost of the lawn repair as claimed in the amount of **\$100.00**.

The Landlord claims the Tenant's pets damaged the flooring. The Tenant claims the floors were damaged by the previous renter. The Landlord failed to prepare a move in condition inspection report at the time the tenancy began as required by the *Residential Tenancy Act* and the *Regulation*. Without such a report, clearly indicating the condition of the floors at the start of the tenancy, I am unable to find that the alleged damage to the floors was caused by this Tenant. Accordingly, I dismiss her claim for compensation for the repairs to the flooring in the amount of \$477.54.

As the Landlord has been substantially successful, I award her recovery of the **\$100.00** filing fee.

The Landlord is awarded compensation in the amount of **\$2,574.40** for the following:

Damage to washing machine	\$370.24
Damage to rugs	\$610.40
Damage to vacuum system	\$452.76
Cleaning	\$500.00
Damage to exterior painting	\$441.00
Damage to lawn	\$100.00
Filing fee	\$100.00
TOTAL	\$2,574.40

Conclusion

I authorize the Landlord to retain the Tenant's pet damage and security deposit in the amount of **\$1,400.00** and I grant her a Monetary Order for the balance due in the amount of **\$1,174.40**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: January 6, 2017

Residential Tenancy Branch