



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF (Landlord's Application)
 MNSD, MNDC, FF (Tenant's Application)

Introduction

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by Landlord on July 6, 2016 and by the Tenant on August 11, 2016.

The Landlord applied for a Monetary Order for: damage to the rental unit; unpaid utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation and/or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant.

The Tenant applied for: money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of his security deposit; and, to recover the filing fee from the Landlord.

Preliminary Issues

When the Tenant filed his Application, he disclosed a monetary claim of \$25,000.00, which is the maximum amount that can be applied for in a dispute pursuant to Section 58(2) (a) of the Act. The Tenant wrote in the details of the dispute section of the Application that he was seeking relief for the following items: loss of quiet enjoyment of the rental property; return of his security deposit; overpayment of utilities; and punitive damages. However, the Tenant did not assign a monetary amount for each of these portions of the monetary claim.

The Landlord and Tenant appeared for the January 5, 2017 hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application by mail during that hearing. The January 5, 2017 hearing heard the Landlord's monetary claim and the Tenant's rebuttal evidence. However, that hearing was adjourned due to the assigned time limit. An Interim Decision was sent to both parties dated January 5, 2017 and this should be read in conjunction with this Decision. In that Interim Decision, the

Tenant was allowed to submit further rebuttal documentary evidence to the Landlord's monetary claim.

The Landlord and Tenant appeared for the January 26, 2017 reconvened hearing. The Landlord had with him an advocate who explained that that her role was to assist the Landlord in his comprehension of the English language and the hearing process. Accordingly, I allowed the Landlord's advocate to remain on the conference call and assist the Landlord in this capacity.

For this reconvened hearing, the Tenant provided three pages of evidence which comprised of two pages of written submissions and one page of company work losses incurred by the Tenant. The two pages of written submissions included a monetary breakdown of the costs the Tenant was seeking from the Landlord which amounted to \$66,196.32.

In both hearings, the hearing process was explained to the parties and the parties were asked if they had any questions regarding the proceedings. In the January 27, 2017 hearing, the Landlord raised the issue of the Tenant's increased monetary claim which the Tenant had submitted in his three pages of further rebuttal evidence and that this amount had exceeded the allowable claim amount. The Landlord and his advocate pointed out that the Landlord had received this increased monetary claim and he now had to defend and argue a much larger claim against him which was should not be allowed.

The Tenant explained that he had sought to breakdown his monetary claim of \$25,000.00 but as he was preparing this breakdown, the costs he felt were owed to him kept increasing even though he understood that the maximum claim amount was \$25,000.00. The Tenant stated that he was unsure and not in a position to determine which parts of the \$66,196.32 he wanted to abandon as he had extensive evidence to support his claim for all portions of the increased amount. The Tenant was informed that he would have to file a claim of more than \$25,000.00 in the Supreme Court of British Columbia and that I could not work through his monetary claim of \$66,196.32 to decide which portions he would be successful on as this would not be proper and be prejudicial to the Landlord.

In addition, I cautioned the Tenant that Rule 2.5 of the Dispute Resolution Rules of Procedure requires an applicant to provide a detailed calculation of any monetary claim to the extent possible at the time the Application is made. This is vital, especially in cases where a party faces a large monetary claim against them and is entitled to know what amounts comprise of that claim so that it may be rebutted and argued

appropriately. In this respect, I find the Tenant failed to do this when he filed his Application for the items he sought in the details section. However, as I had not heard any evidence pertaining to the Tenant's Application, I informed the Tenant that I would allow him to re-file his Application so that he can re-consider his monetary claim and which portions he wants to claim from the Landlord that amount to the limit provided for by the Act. The Tenant is then responsible for serving the Application to the Landlord with a detailed monetary breakdown of the claim which will then give sufficient opportunity for the Landlord to prepare and present a rebuttal response. In this way, I find that neither party would be prejudiced by this course of action. The parties did not raise any objection to this course of action after it was explained to them.

Based on the foregoing, I dismissed the Tenant's Application and provide the Tenant leave to re-apply. As the January 5, 2017 hearing heard the Landlord's monetary claim and the Tenant's rebuttal to that, I now move forward with making legal findings on the Landlord's Application which is detailed below.

With respect to the Landlord's monetary claim, both parties were given an opportunity to present their evidence, make submissions to me, and to cross examine the other party on the evidence provided. While both parties submitted and presented a large amount of evidence prior to and during the January 5, 2017 hearing, I have only documented the parties' relevant evidence relating to the Landlord's monetary claim of \$2,400.00. In addition, I did not consider any of the additional rebuttal evidence provided by the Tenant prior to the January 27, 2017 hearing because this consisted of three points of written submissions that did not pertain to the Landlord's monetary claim.

Issues to be Decided

- Is the Landlord entitled to unpaid utilities in this tenancy?
- Is the Landlord entitled to damages and cleaning to the rental unit?
- Is the Landlord entitled to keep all of the Tenant's security deposit?

Background and Evidence

Both parties agreed that this oral tenancy started on July 29, 2015 on a month to month basis. Rent for the unit was payable by the Tenant in the amount of \$975.00 on the first day of each month. The Tenant paid a security deposit of \$500.00 at the start of the tenancy which the Landlord still retains. The parties confirmed that the tenancy ended on June 30, 2016 after the Tenant provided written notice. The Landlord confirmed that he had not completed a move-in or move-out Condition Inspection Report ("CIR") of the

rental unit. The Tenant confirmed that he did not provide the Landlord with a forwarding address at the end of the tenancy.

The Landlord was asked to present his monetary claim as detailed on page 37 of his documentary evidence. The Landlord testified the Tenant owed him for utilities in the amount of \$508.18 which he calculated based on utility bills he provided into evidence. The Landlord testified that at the start of the oral tenancy agreement, the Tenant was required to pay one third of the utilities. The Landlord stated that he would provide a copy of the utility bill along with a demand for payment of one third of the total amount on each bill. The Landlord confirmed that the Tenant made his utility payments by cash.

The Landlord testified that at the end of January 2016, the Tenant informed him that his son was experiencing breathing problems and therefore he had to have the windows of the rental unit open in the colder months which would increase the Tenant's utility usage. The Landlord stated that as a result, the Tenant verbally agreed to pay 50% of the utilities from February 2016 onwards. The Landlord testified that however, the Tenant failed to honor this verbal agreement and now owes him \$508.18 in unpaid bills. The Landlord provided utility bills into evidence along with a calculation he had performed on page 22 of his evidence to show how he had reached the amount he was claiming the Tenant had not paid. However, the Landlord agreed that this amount was not reflective of all the time period that the Tenant had used increased utilities.

The Tenant denied that he had a verbal agreement with the Landlord to pay 50% of the utilities. The Tenant testified that the Landlord saw windows at the rental unit open after he was having regular showers. The Tenant testified that it was for this reason the Landlord told him that he had to pay 50% of the utilities. The Tenant stated that he was forced by the Landlord to pay an excess of utilities for three months starting in January 2016, but that this was not 50%, rather an excess amount that was more than one third which was the only amount he was required to pay under the oral tenancy agreement.

The Tenant disputed the Landlord's claim for utilities submitting that he is not in any utility arrears. The Tenant stated that he made his rent and utility payments to the Landlord in cash but the Landlord failed to provide him with receipts when he requested. The Tenant submitted that the Landlord's calculation for utility costs was flawed and that for the last three months of the tenancy, he was rarely at the rental unit so the bills presented to him by the Landlord should have been a lot lower than the amounts appearing on the bills which were likely due to the Landlord's increased usage. The Landlord acknowledged that he had not provided the Tenant any cash receipts for rent or utilities because the Tenant had not asked for any.

The Landlord claims \$300.00 for eight hours of cleaning he performed at the rental unit which he testified was left dirty and unclean by the Tenant. The Landlord referred to his extensive photographic evidence to show the state of the rental unit left by the Tenant at the end of the tenancy. The Landlord did acknowledge that the photographs were taken one and a half months after the tenancy had ended. In addition, I noted that there were many photographs taken of the unit during the tenancy as the Tenant's possessions and property are evident in them. The photographs show staining to the carpet, a small amount of mold and insect debris in the windows, dirty baseboards, scuff marks to some walls, and dirty kitchen drawers and appliances.

The Tenant disputed the Landlord's claim that the Tenant had left the rental unit unclean. The Tenant referred to his video evidence of the last day of the tenancy to show that the rental unit was left clean. The Tenant also referred to a cleaning receipt from a professional company he had employed to clean the rental unit. The Tenant submitted that the Landlord's photographs were not reliable as a significant delay had occurred from the time the tenancy had ended to the time they were taken. The Tenant suggested that someone else had resided in the rental unit during this time. The Landlord disputed this evidence.

The Landlord claims \$2,000.00 for repainting costs for damage the Tenant caused to the walls of the rental unit. The Landlord testified that the Tenant had put holes and scratches in the walls as well as evidence of human feces. The Landlord provided a handwritten receipt which the Landlord testified was from a professional painting company who spent a week painting the rental unit. The Landlord also provided an extensive amount of photographs showing the painting work being carried out.

The Tenant denied the Landlord's claim for painting costs stating that the holes in the walls were present at the start of the tenancy. The Tenant explained that there were some holes in the walls but these were caused from putting up pictures which were reasonable wear and tear. The Tenant disputed the Landlord's painting receipt stating that the Landlord failed to provide a verifiable receipt or any comparison costs from other companies to justify the amount he was claiming.

The Landlord claims \$44.80 for the hiring of a carpet cleaner which he had to use to clean the carpets at the end of the tenancy. The Landlord provided a copy of the invoice into evidence for this cost and referred to his extensive photographs showing staining to the carpet.

The Tenant denied the Landlord's claim for carpet cleaning and testified that the carpets were stained at the beginning of the tenancy and that the Landlord was attempting to

blame this damage on the Tenant. The Tenant testified that the cleaning company he hired to complete the cleaning shampooed the carpets. However, the cleaning invoice provided by the Tenant does not indicate any shampooing but only details that the kitchen drawers were wiped out and that 1.25 hours of cleaning was completed.

Analysis

Under Section 7 of the Act a party who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss. Section 67 of the Act provides that if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of compensation that is due and order that the responsible party pay compensation to the other party.

When a party makes a claim for damage or loss under the Act, the burden of proof is on the Applicant to prove the existence of the loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the Respondent. Furthermore, when disputed by the opposing party with an equally probable version of the events, this results in one party's word against the others; without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim must fail. This does not necessarily mean that one party's word is believed over the other's, but simply that in the interest of natural justice, a party's disputed and unsubstantiated evidence may not be sufficient to support a decision in favour of the Applicant.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, an Arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Accordingly, I apply the above test along with the following provisions of the Act in making findings on the Landlord's monetary claim. In respect to the Landlord's

monetary claim for unpaid utilities, Section 14 of the Act prevents any party in a tenancy agreement from making unilateral changes to the terms of that agreement.

Accordingly, I accept the undisputed evidence before me that the oral tenancy agreement required the Tenant to pay one third of the utilities at the time it was entered into. However, there is not sufficient evidence before me that the parties were in mutual agreement to increase the payment of utilities to 50%; this agreement was not made in writing and it was incumbent on the parties to have recorded any change to the tenancy agreement made between them, which it was not.

In addition, while both parties provided utility bills into evidence, there is no transactional evidence of the actual monies that were paid to the Landlord and whether this amount was in excess or less than what was required under the oral agreement. Section 26(2) of the Act requires a landlord to give a tenant a receipt for rent paid in cash; this provision of the Act does not hinge on a tenant's requirement to ask for a rent receipt, rather the Act places the burden on the landlord to provide this to the tenant. In this case, the Landlord failed to comply with the Act in giving the Tenant receipts for the utilities paid. Therefore, in the absence of such evidence, I am not satisfied by the Landlord's disputed evidence of the actual amounts the Tenant paid and whether the Tenant was in utility arrears.

Furthermore, I find the Landlord's acknowledgment that the utilities calculated by him did not reflect the entire period the Tenant was required to pay the increased amount pursuant to an oral agreement, further supports a finding that the Landlord has failed to prove the correct amount of the actual utilities alleged to be owed by the Tenant. For these reasons, I dismiss the Landlord's claim for unpaid utilities.

With respect to the Landlord's claim for cleaning and damages to the rental unit, Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the unit, **unless** a party has a preponderance of evidence to the contrary. Sections 23 and 35 of the Act states that a tenant and landlord together must inspect the condition of the rental unit at the start and end of a tenancy and the landlord **must** complete a CIR. This requirement of the Act is intended to record the state of the rental unit at the start and at the end of the tenancy so that parties may use this as reliable comparative evidence in the event of a dispute such as this one.

In this case, the Landlord failed to complete a move-in or move-out CIR as required by the Act. Therefore, in the absence of such a vital document, I must place the

appropriate weight to the Landlord's disputed evidence in making findings on his monetary claim for cleaning and damages as follows.

The Landlord relies heavily on a large amount of photographs he took after one and half months following the ending of the tenancy, some of which were taken during the tenancy. However, I find the Tenant's video evidence sufficiently rebuts the Landlord's photographic evidence. I find the Tenant's video evidence is much more reliable than the Landlord's photographic evidence because the video records the state of the rental unit on the day the tenancy ended.

I find the Tenant's video evidence does indicate that the rental unit was cleaned at the end of the tenancy and that it is plausible that the Landlord's close up photographs showing items such as: small amounts of mold in the windows; insect debris; and dust on the baseboards, could have occurred during the one and half month period that lapsed from the end of the tenancy or when the Landlord was having the painting work completed. Had the Landlord complied with the reporting requirements of the Act in completing a CIR with the tenant, this issue would have been easier to determine.

I find the Tenant's evidence that he employed a professional cleaning company to clean the rental unit corroborates a finding that the Tenant cleaned the rental unit at the end of the tenancy. I find the cleaning company's written evidence that some of the kitchen cupboards were cleaned out at the end of the tenancy sufficiently rebuts the Landlord's photographic evidence of dirty cupboards.

Furthermore, I find the Landlord's claim of eight hours of cleaning for which he assigned himself \$37.50 per hour is not verified. This is because I find the Landlord's photographic evidence of dirt left behind by the Tenant is not sufficient to reflect or justify the need for eight hours of cleaning.

I also find the Tenant's video evidence does not indicate any significant damage to the walls that went beyond that of reasonable wear and tear. I find the Landlord's close up photographs showing scuff marks to the walls only demonstrates that these marks are attributable to reasonable wear and tear that would be expected when a tenant moves into a rental unit, occupies it during a tenancy, and then moves out of the rental unit. In addition, the Landlord provided no written instructions to the Tenant to inform the Tenant that putting up nail holes for pictures was prohibited and so it is reasonable to expect that the Tenant put up pictures during the tenancy.

In addition, I accept the Tenant's submission as to the authenticity of the Landlord's quote for the painting of the rental unit. This is a handwritten quote of \$2,000.00 which

has no letterhead that could have been used to verify the work done. Neither does it detail whether the painting was done of the entire rental unit, which the Tenant would not have been responsible for, or if the work was done to rectify the alleged damage caused by the Tenant. I find the Landlord failed to provide comparative costs from other painting companies which would have given merit to the painting invoice provided into evidence.

Based on the foregoing findings, I find the Landlord has failed to meet the above test to be awarded the claim amounts for cleaning and damage to the rental unit claimed.

In relation to the stains in the carpet, I find this is evident on the Tenant's video evidence and the Landlord's photographic evidence. However, the Tenant submits that the staining in the carpet was present at the start of the tenancy. Again, in this case, the CIR would have been an essential piece of evidence to determine the validity of the evidence provided. That evidence is not before me and therefore, I am only able to conclude that the Landlord has failed to provide a preponderance of evidence to show the Tenant caused the staining to the carpet and that it was not present at the start of the tenancy.

With respect to the Landlord's monetary claim for cleaning of the carpet, the Tenant pointed to his cleaning invoice he provided into evidence to show the carpets had been shampooed at the end of the tenancy by the cleaning company. However, the Tenant's cleaning document does not detail any cleaning that was performed to the carpet by the cleaning company. That document shows that the cleaning company only performed 1.25 hours of work and I find it hard to believe that in this time they would have both shampooed the carpets and cleaned the rental unit. Therefore, I award the Landlord the \$44.80 claimed for the cost of hiring the carpet cleaner and nominal damages of \$50.00 to perform the carpet cleaning at the rental unit.

As the Landlord has only been able to prove a small fraction of his monetary claim, I am only prepared to award the Landlord half of the filing fee paid in the amount of \$50.00. Therefore the total award to the Landlord is \$144.80.

As the Landlord already holds \$500.00 in the Tenant's security deposit, pursuant to Section 72(2) (b) of the Act I order the Landlord to retain \$144.80 from this amount to obtain the relief awarded. The Landlord must return the remainder of the security deposit in the amount of \$355.20 to the Tenant forthwith.

The Tenant is issued with a Monetary Order for the return of this amount which is enforceable in the Small Claims Division of the Provincial Court if the Landlord fails to return this payment. A copy of this order is attached to the Tenant's copy of this

Decision. The Landlord maybe held liable for any enforcement costs if payment is not made.

Conclusion

The Landlord has only been successful in proving carpet cleaning not completed by the Tenant. As a result, the Landlord is able to obtain relief for this and half of the filing fee from the Tenant's security deposit in the amount of \$144.80. The remainder of the Tenant's \$355.20 security deposit must be returned to the Tenant forthwith. The remaining three portions of the Landlord's monetary claim are unproven and are dismissed without leave to re-apply.

The Tenant's monetary claim was not heard in this hearing as the Landlord had not been properly informed of the claim being made against him in a timely fashion. Therefore, the Tenant's Application is dismissed with leave to re-apply. In the alternative, the Tenant may file a claim of more than \$25,000.00 in the Supreme Court of British Columbia.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 27, 2017

Residential Tenancy Branch