



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 convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation for unpaid rent or utilities, cleaning and repair of the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference on February 6, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. The Landlord was also assisted by a translator.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent or utilities?
2. Is the Landlord entitled to monetary compensation from the Tenant for cleaning of and damage to the rental unit?
3. Should the Landlord recover the filing fee paid?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed August 22, 2015 (the "Agreement"). The Agreement provided that the tenancy was for a fixed term tenancy ending August 21, 2015; the Landlord testified that the Agreement should have read August 21, 2016 and confirmed this was a mistake. Also pursuant to the Agreement the Tenant paid monthly rent in the amount of \$1,850.00 and a security deposit in the amount of \$925.00. Utilities were not included.

The Landlord confirmed that she did not complete a move in condition inspection report.

The Landlord testified that she gave the Tenant notice to end the tenancy by August 22, 2016 (the date contemplated by the Agreement). The Landlord stated that the Tenant stated that she had found another place to live and wanted to leave early and the Landlord agreed she could do so. The tenancy ended approximately one month before the term ended.

In the within hearing the Landlord sought compensation for the following:

Unpaid hydro bill for April 21 to July 20	\$299.14
Wall damage and paint garage ceiling; water damage caused by water filter installation	\$4,100.00
Cleaning of rental unit	\$472.50
Garburator replacement	\$208.95
Floor damage due to severe scratches (estimate)	\$1,500.00
Garage door repair (estimate)	\$2,000.00
Stove replacement due to damage to glass stove top	\$1,500.00
Estimated cost to deal with odour in the rental unit	\$150.00
Penalty from the strata for not providing access for a fire inspection	\$100.00
Filing fee	\$100.00
Unpaid rent for August 2016	\$1,850.00
TOTAL	\$11,355.59

The Landlord stated that the Tenant installed a water purifier in the kitchen without the Landlord's knowledge or consent. She stated that the cost to repair the hole made by the Tenant, as well as the water damage caused by the water coming through the wall cost \$4,100.00. Introduced in evidence was an invoice for this cost as well as photos of the water damage to the ceiling.

The Landlord stated that the Tenant did not clean the rental unit when she moved out. She further stated that the Tenant asked the Landlord to hire someone to attend to the cleaning as the Tenant stated she did not have time. To this end the Landlord sought the sum of \$472.50. Photos submitted by the Landlord confirm the condition of the rental unit. As the Tenant did not dispute this claim I will not detail the contents of those photos.

The Landlord stated that the garburator required replacement at the end of the tenancy. The Landlord further stated that the Tenant called her during the tenancy and stated that the garburator was not working. The Landlord further stated that she attempted to have someone come to the rental unit to repair the garburator, but the Tenant kept saying she was too busy. The Landlord stated that when the Tenant moved out the repair person found out that it was damaged due to seeds.

The Landlord stated that the Tenant scratched the wood flooring which she estimated to be eight years old. She stated that the room which was damaged was barely used prior to the subject tenancy. The Landlord also claimed that the cost to replace the floors will be much more than the \$1,500.00 claimed as an *estimated* cost.

The Landlord also testified that the Tenant dented the garage door. She suggested that the damage appeared to be caused by the Tenant parking her car. She claimed \$2,000.00 as the estimated amount to repair the door.

The Landlord also claimed the Tenant chipped the gloss stove top. She confirmed the stove was approximately seven years old when the tenancy began. She stated that she called to ascertain the cost to repair the top only and was informed it was the same amount to replace the stove; accordingly she claimed \$1,500.00 as the cost to replace the stove.

The Landlord also claimed \$150.00 as the estimated cost to remove the odour from the rental unit. She stated that she purchased over \$100.00 worth of chemicals to deal with the odour. When I asked if she could be more specific she said she could not. When I asked her if it was closer to \$105.00 she immediately stated it was \$105.00. She confirmed she did not provide receipts to substantiate this claim.

The Landlord also claimed \$100.00 as the penalty charged by the strata when the Tenant denied them access for a fire inspection. A copy of a letter from the strata to the Landlord dated May 10, 2016 was provided in evidence.

The Landlord also sought compensation for loss of rent for the month of August in the amount of \$1,850.00 as she claimed she suffered a loss of one month's rent as the rental unit was not rentable at the end of the tenancy. The Landlord then stated that she decided not to rent the rental unit anymore due to the experience she had with the Tenant and the amount of damage caused.

The Landlord claimed recovery of the filing fee.

The Tenant confirmed she was agreeable to paying the outstanding hydro bill in the amount of **\$299.14**.

The Tenant stated that she was not agreeable to paying the amounts claimed for damage caused by the water filtration installation and alleged leaking. The Tenant stated that she informed the Landlord that she wanted a water filtration system and she asked permission from the Landlord. The Tenant further stated that the day the water filtration system was installed the water company and the Landlord were there and they did it together. The Tenant confirmed she personally paid for the water filtration installation.

The Tenant confirmed she was agreeable to the Landlord using the deposit to pay the cost of cleaning **\$472.50**.

The Tenant opposed the Landlord's claim for the cost to repair the garburator. She stated that the garburator worked for the first month, but then it did not work. She stated that she asked the Landlord to fix it many times and the Landlord never did. The Tenant stated that she did not break the garburator and that it just stopped working for unknown reasons.

In terms of the Landlord's claim for damage to the floor, the Tenant stated that it was normal wear and tear. She also stated that she was willing to pay some of it, but as she estimated the floors were at least ten years old at the time she submitted that some wear and tear is expected.

In terms of the Landlord's claim for the cost to repair the garage door, the Tenant stated that she did not damage the garage door. She stated that after she had been living at the rental unit for six months, the Landlord informed her that she wanted to conduct a "six month inspection". She stated that after that the Landlord started saying that she was responsible for the garage door damage.

In terms of the Landlord's claim to replace the stove the Tenant stated that the stove was not new and was not in new condition. The Tenant stated that she used the stove and cooked with it, but did not damage it as alleged by the Landlord.

In terms of the Landlord's claim for the cost to deal with the odour the Tenant stated that she was confused as to how the "home cleaning" of \$472.50 did not deal with the alleged odour.

In terms of the Landlord's claim for compensation for the penalty for not allowing access for the fire inspection, the Tenant denied that she had any knowledge of this.

In terms of the Landlord's claim for loss of rent, the Tenant stated that she had cleaned the rental unit for the purposes of the Landlord showing the unit for sale. She stated that at no time did the Landlord indicate she wished to re-rent the rental property.

In reply to the Tenant's submissions the Landlord stated that the Tenant did not inform her about the water purification installation, and that the Tenant was lying. The Landlord further stated that she was surprised when she saw that she had installed a water purification system; she further stated that she told the Tenant that if this caused any damage she was going to expect compensation from the Tenant.

The Landlord further stated that the Tenant received a letter from the strata regarding the inspection; again she stated the Tenant was lying.

The Landlord stated that she decided to sell the house rather than re-rent and confirmed that she sold the house in September 2016.

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 her 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.

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.

The Landlord claimed **\$299.14** for the outstanding utilities. The Tenant confirmed she was agreeable to paying this amount. Accordingly I award the Landlord compensation for this amount.

The Tenant also confirmed she was agreeable to paying the **\$472.50** claimed for cleaning.

The Landlord also claimed compensation for damage to the rental unit.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

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.

The Landlord claimed the Tenant installed a water filtration system without her knowledge and consent. The Tenant claimed she had such consent and the Landlord was present when the system was installed.

Residential Tenancy Policy Guideline 1. Landlord & Tenant—Responsibility for Residential Premises provides in part as follows:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. 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, based on the evidence before me that the Tenant has failed to prove that the Landlord explicitly consented to the installation of the water purification system. I accept the Landlord's evidence, including the receipt submitted in evidence, that this system caused water damage to the rental unit. I further find the Tenant is responsible for compensating the Landlord the **\$4,100.00** claimed for the cost to repair the damage caused by this system.

The Landlord alleged the Tenant damaged the garburator with "seeds". No further evidence was provided as to the size of these seeds or whether the use of a garburator to grind seeds is normal use, or representative of damage. I am unable, on the basis of the evidence before me to conclude that the Tenant damaged the garburator as alleged by the Landlord and I therefore decline the Landlord's request for compensation in this regard.

The Landlord sought compensation for the cost of a strata fine incurred when the Tenant allegedly refused access to the rental unit for a fire inspection. The Tenant denies any knowledge of the request or the fine. On the evidence before me I am unable to find that the Tenant was aware of this request or is otherwise responsible for the fine incurred. I therefore decline the Landlord's request for compensation in this regard.

The Landlord claimed compensation for the cost to deal with an unpleasant odour in the rental unit. I found her evidence in this regard to be vague. I further agree with the Tenant that the cleaning should have been sufficient to deal with any alleged odours. I therefore decline her request for related compensation.

The balance of the Landlord's claims includes estimated costs to repair alleged damage to the rental unit. The Landlord testified that she sold the rental unit in September of 2016. Accordingly, the costs were not incurred by the Landlord.

The Landlord failed to submit any evidence to support a finding that the sale price of the rental unit was impacted by the alleged damage. Accordingly, I am unable to find that the Landlord suffered related losses. I therefore decline her request or compensation for the floors, garage door, and stove.

I also decline the Landlord's request for compensation for loss of rent for August 2016 as she testified she did not attempt to re-rent the rental unit, rather she decided to sell.

As the Landlord has only been partially successful, I grant her recovery of one half of the filing fee in the amount of **\$50.00**.

In total I award the Landlord the sum of **\$4,921.64** for the following:

Unpaid hydro bill for April 21 to July 20	\$299.14
Wall damage and paint garage ceiling; water damage caused by water filter installation	\$4,100.00
Cleaning of rental unit	\$472.50
½ Filing fee	\$50.00
TOTAL	\$4,921.64

Conclusion

The Landlord is awarded the sum of \$4,921.64 in compensation for damage to the rental unit, unpaid utilities, cleaning and recovery of one half of the filing fee.

The Landlord is authorized, pursuant to sections 38 and 72 of the *Residential Tenancy Act*, to retain the Tenant's \$925.00 security deposit towards the amounts awarded and is granted a Monetary Order for the balance due in the amount of **\$3,996.64**.

This Monetary Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division)

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: February 24, 2017

Residential Tenancy Branch