



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) by the tenants under the *Residential Tenancy Act* (the “Act”) for a monetary order in the amount of \$17,741.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of their security deposit and pet damage deposit, for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for a rent reduction and to recover the cost of the filing fee.

On February 8, 2017, the hearing commenced and was adjourned to March 16, 2017. An Interim Decision dated February 10, 2017 was issued which should be read in conjunction with this decision. On March 16, 2017, the parties attended the reconvened hearing and after 46 minutes the hearing was again adjourned. An Interim Decision dated March 16, 2017 was issued which should be read in conjunction with this decision. On May 3, 2017, the parties attended the reconvened hearing and after an additional 49 minutes the hearing concluded.

Attending the teleconference hearing was the tenant M.S. (the “tenant”) and the agents for the landlord (the “agents”) who provided affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the relevant evidence is provided below and includes only that which is relevant to the matters before me.

Issue to be Decided

- Have the tenants provided sufficient evidence to prove that they are entitled to compensation under the Act, regulation or tenancy agreement, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on August 1, 2013 and ended on July 25, 2016. In a previous decision, the file number of which has been included on the cover page of this decision for ease of reference, the security deposit and pet damage deposit have already been deal with under the *Act* and as a result I will not consider the combined deposits further.

The tenants' monetary claim of \$17,741.00 is comprised of the following which actually totals \$17,791.00:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damage deposit	\$2,050.00
2. Cleaning	\$500.00
3. Packing	\$500.00
4. Boxes	\$75.00
5. Loss of square footage	\$6,560.00
6. Lawn repair	\$90.00
7. Repair stove	\$50.00
8. Replace central vac parts	\$33.00
9. Central vac parts	\$25.00
10. Replace rotted planter for tree in front yard	\$45.00
11. Replace dishes	\$50.00
12. Replace kettle – old and rusty	\$33.00
13. Move furniture, prep house for painting	\$300.00
14. Reduced rent by 10% for furniture that was agreed upon but not provided or was in disrepair.	\$7,380.00
15. Filing fee	\$100.00
TOTAL	\$17,791.00

Regarding item 1, the tenants have claimed \$2,050.00 for the “damaged deposit” which is actually called a security deposit under the *Act*. In the previous decision described above, the security deposit has already been deal with under the *Act*, and as a result will not be dealt with again in this decision which will be explained further in this decision.

Regarding item 2, the tenants have claimed \$500.00 for cleaning costs at the start of the tenancy. The tenant claims that the photos submitted in evidence were taken at move-in which the agents disputed. Both parties referred to the condition inspection report submitted in evidence. According to the condition inspection report it reads in part:

..."house needs cleaning (walls, fridge, over, floors) OWNER VISITED HOME FOR 2 HOURS + ONLY CLEANED BLINDS"

[Reproduced as written]

The tenants describe the cleaning as 20 hours at \$25.00 per hour and write in their monetary order worksheet that "cleaning was harder than a normal move-in clean because I had to remove items from cupboards, drawers, fridge, etc. before it could be cleaned."

The agents did not dispute that the condition inspection report indicated that cleaning was required at move-in. The tenants stated that no receipt was issued as the cleaning was done by the tenants. The agents stated that the landlord did not receive a request during the tenancy for compensation for cleaning the rental unit. The tenant stated that she took her children out while she was nine months pregnant so that cleaning could occur and when she came back to the rental unit, the landlord had only cleaned the blinds. The agent did not dispute that only the blinds were cleaned by the landlord.

Regarding item 3, the tenants have claimed \$500.00 for packing of the landlord's personal items. The parties did not dispute that the house was rented as a furnished rental property. The tenants confirmed that the landlord's personal items that the tenants did not want to make use of were not listed on the condition inspection report. As a result, this item was dismissed during the hearing due to insufficient evidence which will be discussed further in this decision.

Regarding item 4, the tenants have claimed \$75.00 for boxes to store the landlord's personal items in, which was dismissed during the hearing as no receipt was submitted in evidence in support of this portion of the tenants' claim.

Regarding item 5, the tenants have claimed \$6,560.00 due to an alleged loss of square footage during the tenancy. As soon as the tenant testified that the claim was for the 16 months, her claim was dismissed due to non-compliance with section 7 of the *Act* which will be described later in this decision.

Regarding item 6, the tenants have claimed \$90.00 for lawn repair which was dismissed during the hearing as the tenants failed to submit a receipt to support this portion of the tenants' claim.

Regarding item 7, the tenants have claimed \$50.00 to repair the stove which the agents claim was not requested by the landlord and to which the landlord would have addressed. The tenant confirmed that there was no compensation requested during the tenancy and that they advised the landlord that the male tenant got the stove working. The agents affirmed that the tenants could have damaged the stove further by attempting the repair themselves which the landlord would not have supported or recommended.

Regarding item 8, the tenants have claimed \$33.00 for the cost of the central vacuum parts but failed to submit a receipt in evidence. As a result, this portion of the tenants' claim was dismissed during the hearing due to insufficient evidence.

Regarding item 9, and related to item 8 described above, the tenants have claimed \$25.00 as time for their labour to repair the central vacuum system. The agents affirmed that the landlord was never contacted by the tenants about the central vacuum system to support this portion of their claim and that there were no discussions about the central vacuum system. The tenant did not dispute that the landlord was not contacted about compensation related to the central vacuums system.

Regarding items 10, 11 and 12, the tenants have claimed \$45.00 to replace an alleged rotted planter for a tree in the front yard, \$50.00 to replace dishes, and \$33.00 to replace a kettle which the tenants claim was "old and rusty." All three of these items were dismissed during the hearing due to insufficient evidence as the tenants failed to provide a receipt in support of these portions of the tenants' claim.

Regarding item 13, the tenants requested that the rental unit be repainted which the landlord agreed to do. The agents stated that the tenants were responsible to move their personal items to allow for the painters to come into the rental unit to paint. The tenants have claimed \$300.00, comprised of 12 hours at \$25.00 per hour to move their personal items such as furniture and pictures from the walls to allow for the rental unit to be painted. The agents stated that the tenants had never requested any form of compensation related to this item during the tenancy as the tenants requested the painting and the landlord agreed to pay for the painting.

Regarding item 14, the tenants have claimed \$7,380.00 which has been calculated at a rent reduction of 10% for the entire tenancy due to furniture that was agreed to but not

provided or was in disrepair. The tenant confirmed that there was nothing in writing to support this portion of her claim, such as an addendum to the tenancy agreement to support what specific items she was claiming for. The tenant also confirmed that the tenants never wrote to the landlord to request that items be provided or repaired. In addition, the tenant was advised that the tenants did not comply with section 7 of the *Act* regarding this portion of their claim which will be described later in this decision.

Analysis

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

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenants did what was reasonable to minimize the damage or losses that were incurred.

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.

Item 1 – Firstly, I will address the tenant's claim for the return of their security deposit. The parties were informed during the hearing, that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under

the legal principle of *res judicata*. Res judicata is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

With respect to res judicata, the courts have found that:

“...the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

Mr. Justice Hall of the Supreme Court of British Columbia, in the case *Leonard Alfred Gamache and Vey Gamache v. Mark Megyesi and Century 21 Bob Sutton Realty Ltd.*, Prince George Registry, Docket No. 28394 dated 15 November, 1996, quoted with approval the above passage from the judgement of *Henderson v. Henderson*, (1843), 67 E.R. 313.

In light of the above, I am unable to hear a claim for the return of the tenants' security deposit as that matter has already been resolved in the previous decision. As a result, I dismiss item one without leave to reapply.

Item 2 - The tenants have claimed \$500.00 for cleaning costs at the start of the tenancy. The tenant claims that the photos submitted in evidence were taken at move-in which the agents disputed. Both parties referred to the condition inspection report submitted in evidence. According to the condition inspection report it reads in part:

...”house needs cleaning (walls, fridge, over, floors) OWNER VISITED HOME FOR 2 HOURS + ONLY CLEANED BLINDS”

[Reproduced as written]

The tenants describe the cleaning as 20 hours at \$25.00 per hour and write in their monetary order worksheet that “cleaning was harder than a normal move-in clean because I had to remove items from cupboards, drawers, fridge, etc. before it could be cleaned.”

As the agents did not dispute that the condition inspection report comments as indicated, I find the landlord purposely misled the tenants by indicating that the landlord would clean the rental unit and that the landlord is liable as a result for those cleaning costs which I find reasonable at **\$500.00**. Therefore, I find the tenants have met the burden of proof as the agents confirmed that the condition inspection report only indicates that the landlord cleaned the blinds and not the remainder of the rental unit before the start of this tenancy. I find it unreasonable for the landlord to expect the tenant to clean the rental unit before occupancy and not compensate the tenants for that cleaning when the condition inspection report supports that the landlord agrees that cleaning of the rental unit is required at the start of the tenancy.

Item 3 - As indicated above, the tenants have claimed \$500.00 for packing of the landlord's personal items which I dismiss without leave to reapply due to insufficient evidence. I find the tenants have not met the burden of proof and have failed to prove part one, two, and three of the test for damages or loss noted above.

Item 4 – As indicated above, the tenants have claimed \$75.00 for boxes to store the landlord's personal items in which I dismiss without leave to reapply due to insufficient evidence. I find the tenants have not met the burden of proof and have failed to prove part one, two, and three of the test for damages or loss noted above.

Item 5 - Regarding item 5, the tenants have claimed \$6,560.00 due to an alleged loss of square footage during the tenancy. The tenant testified that the claim was for the 16 months. Section 7 of the *Act* applies and 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 dismiss this portion of the tenants' due to insufficient evidence and find that the tenant breached section 7 of the *Act* by allowing this portion of their monetary claim to increase for 16 months before applying for compensation.

Item 6 - The tenants have claimed \$90.00 for lawn repair which I dismissed during the hearing as the tenants failed to submit a receipt to support this portion of the tenants' claim. As a result, I find the tenants failed to meet parts one, two and three of the test for damages or loss for this portion of their monetary claim.

Item 7 - The tenants have claimed \$50.00 to repair the stove. Given the testimony provided I find the tenants have failed to meet the burden of proof. At the very least, I would have expected supporting evidence that the tenants contacted the landlord to request that the stove be repaired and give the landlord a reasonable opportunity to complete the repair. Instead, the supporting evidence was that the tenants let the landlord know that they no longer required a repair as the male tenant was able to get the stove working. As a result, I dismiss this portion of the tenants' monetary claim due to insufficient evidence.

Item 8 - The tenants have claimed \$33.00 for the cost of the central vacuum parts but failed to submit a receipt in evidence. I find the tenants failed to meet part three of the test for damages or loss and have not met the burden of proof as a result. Therefore, this portion of the tenants' claim is dismissed without leave to reapply.

Item 9 – Consistent with my finding regarding item 8 described above, the tenants have claimed \$25.00 as time for their labour to repair the central vacuum system. The agents affirmed that the landlord was never contacted by the tenants about the central vacuum system to support this portion of their claim and that there were no discussions about the central vacuum system. The tenant did not dispute that the landlord was not contacted about compensation related to the central vacuum system. Based on the above, I find the tenants have provided insufficient evidence to support this portion of their monetary claim which is dismissed without leave to reapply.

Items 10, 11 and 12 – The tenants have claimed \$45.00 to replace an alleged rotted planter for a tree in the front yard; \$50.00 to replace dishes; and \$33.00 to replace a kettle which the tenants claim was "old and rusty." All three of these items were dismissed during the hearing due to insufficient evidence as the tenants failed to provide a receipt in support of these portions of the tenants' claim. As a result, I find the tenants failed to meet part three of the test for damages or loss under the *Act*.

Item 13 – There is no dispute that the tenants requested that the rental unit be repainted which the landlord agreed to do. The agents stated that the tenants were responsible to move their personal items to allow for the painters to come into the rental unit to paint. The tenants have claimed \$300.00, comprised of 12 hours at \$25.00 per hour to move their personal items such as furniture and pictures from the walls to allow for the rental unit to be painted.

After careful consideration, I find the tenants have failed to meet parts one, two and three of the test for damages or loss under the *Act*. In addition, I don't find this claim to be reasonable as the tenants requested that the rental unit be repainted and since this was during a tenancy, I find it reasonable that the tenants would be responsible for moving their own personal items so that repainting would be possible. As a result, I dismiss this portion of the tenants' claim due to insufficient evidence without leave to reapply.

Item 14 - The tenants have claimed \$7,380.00 which has been calculated at a rent reduction of 10% for the entire tenancy due to furniture that was agreed to but not provided or was in disrepair. The tenant confirmed that there was nothing in writing to support this portion of her claim, such as an addendum to the tenancy agreement to support what specific items she was claiming for. The tenant also confirmed that the tenants never wrote to the landlord to request that items be provided or repaired. I find the tenants did not comply with section 7 of the *Act* regarding this portion of their claim by allowing this portion of their monetary claim to increase over the period of 16 months before applying for compensation. Therefore, I dismiss this portion of the tenants' monetary claim without leave to reapply due to insufficient evidence.

As some of the tenants' claim had merit, I grant the tenants the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

Give the above, I find the tenants have established a total monetary claim of **\$600.00** comprised of \$500.00 for cleaning costs and the recovery of the cost of the filing fee of \$100.00. Pursuant to section 67 of the *Act* I grant the tenants a monetary order in the amount of **\$600.00**.

Conclusion

A portion of the tenants' monetary claim had merit.

The tenants have been granted a monetary order in the amount of \$600.00. Should the landlord fail to pay the tenants the amount of \$600.00, the tenants must then serve the landlord with the monetary order and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlord is advised that they would be liable for any enforcement costs associated with the tenants enforcing the monetary order.

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: May 29, 2017

Residential Tenancy Branch