# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the Tenant's Application for Dispute Resolution (the "Application") requesting: to cancel a notice to end tenancy for cause; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to recover the filing fee from the Landlord; and for "Other" undisclosed issues.

Preliminary Matters

Both parties appeared for the hearing and provided affirmed testimony. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

The Landlord confirmed receipt of the Application by registered mail. Both parties also confirmed the service and exchange of evidence prior to this hearing. However, the Tenant had submitted an additional late evidence package comprising of written rebuttal submissions to the Landlord's evidence; the Tenant confirmed this was not served to the Landlord because there was not enough time to allow for service. As a result, I did not consider the late evidence provided by the Tenant but informed the Tenant that she was at liberty to provide her written submissions into oral evidence. No objection was raised to this course of action by the parties.

The Tenant also confirmed that she did not want to cancel a notice to end tenancy because this matter had already been dealt with in another hearing that took place in May 2017 in which the Landlord was granted an Order of Possession to end the tenancy. Therefore, this portion of the Application was dismissed. The Tenant confirmed that the only matter to be dealt with in this hearing was her monetary claim, which was laid out into 34 points on a breakdown sheet.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation from the Landlord for the costs being claimed?

Background and Evidence

This tenancy started on April 1, 2015 on a month to month basis. Rent was $1,000.00 payable on the first day of each month. The Landlord resided in the lower portion of the rental home and the Tenant rented the upper portion.

The tenancy ended when the Tenant was served with a notice to end tenancy for cause. The Tenant disputed the notice, but was not successful in cancelling the notice at a May 2017 dispute resolution hearing. As a result, the Landlord was issued with an Order of Possession and the Tenant moved out of the rental unit on July 5, 2017.

During the hearing, the Landlord stated that he was owed compensation as a result of the Tenant over holding the tenancy pursuant to the order to vacate the premises. The Landlord was informed that he was at liberty to file a separate claim for his loss as his claim was not a matter to be decided before me.

The Tenant was asked to present her monetary claim. The Tenant testified that at the start of the tenancy, the parties agreed to split the cost for the replacement of the linoleum flooring with laminate. The Tenant testified that the Landlord now owes her half the cost in the amount of $1,250.00.

The Landlord confirmed the agreement to split the cost of the flooring but testified that he had paid for the full cost of the materials and labour in addition to having it installed. The Landlord explained that the agreement was for the Tenant to then pay the Landlord half of the cost which the Tenant did.

The Tenant confirmed that she had paid the Landlord $1,250.00 for her half of the flooring replacement. When I asked the Tenant why it was that she was seeking to claim this amount paid back from the Landlord, she explained the Landlord was realising the benefit of the flooring and that she could not practically speaking take her half of the flooring back.

The Tenant claims $309.52 for a greenhouse which she erected on the side of the shed located on the rental property. The Tenant stated that it was impractical to take the greenhouse with her at the end of the tenancy and therefore she now claims this cost from the Landlord.

The Landlord responded stating that it was the Tenant who asked to put the greenhouse up for her own use which he authorised, but informed the Tenant that she was required to remove it at the end of the tenancy as the Landlord had his own greenhouse.

The Tenant claimed $60.47 and $52.58 for blinds in the rental unit. The Tenant explained that she had installed these custom blinds at the start of the tenancy and was not able to take them away at the end of the tenancy as they could not be used in her new place. Therefore, the Landlord owes her this cost. The Landlord disputed this cost stating that the Tenant chose to replace the blinds of her own accord.

The Tenant claims $23.14 for the replacement cost of a tub spout valve which she purchased during the tenancy for a repair. The Landlord did not dispute this cost and agreed to pay it.

The Tenant claims for lawn cutting she undertook in this tenancy which she estimates she did 50 times for which she seeks $2,550.00 from the Landlord. The Tenant confirmed that there was nothing in the tenancy agreement that required her to mow the lawns around the rental property.

The Landlord disputed the Tenant’s claim that she mowed the lawn 50 times during the tenancy. The Landlord explained that he mowed the lawn throughout the tenancy but the Tenant was not happy because the Landlord did not use a grass catcher. The Landlord provided photographic evidence of the mowed lawn.

The Tenant rebutted stating the Landlord's mowing of the lawn caused a mess which lead to clippings being treaded into the rental unit, therefore, the Tenant had to take it upon herself to do it properly. The Tenant explained that the Landlord's photographs are recent, reflecting the state of the lawn in 2017, but prior to this the lawn had not been taken care of properly.
The Tenant claims $2,379.68 for labour and landscaping materials such as plants, shrubbery and gardening supplies, for costs she incurred to make the rental property look better. The Tenant provided invoice evidence for these costs and submits that the Landlord is responsible for these costs as he too enjoyed the landscaping the Tenant had undertaken at the property.

The Landlord denied this claim stating that there was no contract or discussion between the parties for the Tenant to purchase the materials claimed for and to do this work. The Landlord explained that the Tenant was free to take all the plants she had planted with her at the end of the tenancy.

The Tenant claims $174.99 for the replacement cost of a microwave. The Tenant testified that she brought her own microwave into the rental unit, and the one supplied with the rental unit was placed into storage. The Tenant explained that when she plugged her microwave into the kitchen wall socket, it blew out her microwave. The Tenant now alleges that it was the electrical problem in the wall socket that caused damage to her microwave.

The Tenant explained that when she tried to plug in the Landlord's microwave retrieved from storage, this also blew up. The Tenant stated that after the Landlord called an electrician, who then fixed the problem, she purchased a new microwave and there were no further problems. The Tenant was unable to provide any timelines of these events.

The Landlord rebutted stating the Tenant was using a six plug connector into the two wall sockets to allow her to plug in other appliances and it was this that caused the Tenant's microwave and the one provided for the rental unit to blow up. The Landlord stated that he called the electrician who fixed the electrical issue the Tenant had caused.

The Landlord stated that the Tenant had used her microwave and the Landlord's microwave for continued periods of time and they did not blow up one after the other like the Tenant had suggested. The Landlord submitted that he owes the Tenant nothing as she blew up his microwave too.

The Tenant disputed the Landlord's evidence stating that it was only after the electrician was called, did the problem with the microwaves go away.

Analysis

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.

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.

In this instance, the burden of proof is on the Tenant 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.

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 must fail.
In this case, I have used the above test along with other considerations below to make findings in this matter as follows.

With respect to the Tenant's claim for the laminate flooring, I find there was an agreement between the parties to split that cost. The Tenant confirmed that she had paid her half of the total cost which the Landlord incurred and agreed upon. Therefore, I find there is insufficient evidence to suggest the Landlord did not uphold his end of the bargain.

The inability of the Tenant to remove her half of the flooring at the end of the tenancy is certainly not grounds for me to make this award to the Tenant. This is because, pursuant to the "Fences and Fixtures" section of Policy Guideline 1, a fixture is defined as a "thing which, although originally a movable chattel, is by reason of its annexation to, or association in use with land, regarded as a part of the land".

For the purposes of determining whether chattels annexed to realty remain personal property or become realty, chattels are divided into two classes:

1. Chattels, such as brick, stone and plaster placed on the walls of a building, become realty after annexation. In other words, where personal property does not retain its original character after it is annexed to the realty or becomes an integral part of the realty, or is immovable without practically destroying the personal property, or if all or a part of it is essential to support the structure to which it is attached then it is a fixture.
2. Other personal property, that does not lose its original character after attachment may continue to be personal property, if the owner of the personal property and the landowner agree.

Fixtures that have been considered tenant's fixtures are:

- Trade fixtures - where the tenant has attached them for the purposes of his trade or business.
- Ornamental and domestic fixtures which are whole and complete in themselves and which can be removed without substantial injury to the building. Examples of a chattel which can be moved intact and are more likely to be considered a tenant's fixture are blinds and a gas stove.

As a result, I find the flooring in the rental unit was a fixture, which the Tenant enjoyed and benefited from during this tenancy. Therefore, I find the Tenant had no right to value she paid for the flooring or for the return of any part of it at the end of the tenancy.

I make the same finding with respect to the Tenant's claim for the greenhouse. The Tenant was not forced into erecting the greenhouse and, according to the Landlord, was at liberty to remove it at the end of the tenancy. The fact that the Tenant was not practically able to do this, does not give rise to compensation. I find the Tenant has failed to disclose any breach by the Landlord in this respect.

The Tenant was also at liberty to remove the custom blinds at the end of the tenancy which she had installed of her own violation. Therefore, I find the Landlord cannot also be held liable for this cost.

With respect to the Tenant's claim for lawn cutting, the Tenant provided insufficient evidence that the Landlord did not maintain the yard during this tenancy. I find the Tenant's disputed oral evidence alone was not sufficient or compelling to prove this portion of the claim.

In addition, even if the Tenant had proved the Landlord neglected the yard or did not mow it properly, the Tenant would have had an obligation to mitigate loss by dealing with the alleged breach expeditiously through written notice and/or through dispute resolution, which she did not do. Instead, the Tenant took it upon herself to correct the Landlord's alleged breach and thereby failing to mitigate loss as required by the above test for damages.

With respect to the Tenant's extensive claim for landscaping labor and planting materials, the Tenant again was not asked or forced by the Landlord to undertake this work. I find the parties' evidence in my view shows me that the Tenant undertook this work for her own benefit and pleasure. Even if the Landlord benefited from the Tenant's work, this does not give rise to compensation to the Tenant. The Tenant has failed to disclose any breach here by the Landlord for this portion of the claim.

The Landlord did not deny the Tenant's claim for the tub spout and agreed to pay this amount. Consequently, I award the amount of $23.14 to the Tenant.

With respect to the microwave, I have examined the evidence before me and I find both parties provide plausible explanations of the events. The Tenant certainly should not have been using a six outlet wall adapter and it is possible that this could have been the source of the problem causing malfunctioning of the microwaves.

However, neither party provided any conclusive evidence, such as an electrician's report, that would point to the exact cause of the problem. Therefore, I must conclude that the Tenant has failed to meet the burden of proof for this portion of the claim.

As the Tenant was successful in only a small portion of her monetary claim, I only award the Tenant half of the filing fee in the amount of $50.00. Therefore, the total amount awarded to the Tenant is $73.14. The remainder of the Tenant's monetary claim is dismissed.

The Tenant is issued with a Monetary Order for this amount which must be paid by the Landlord forthwith. If the Landlord fails to make payment, the Tenant may serve the order and enforce it in the Small Claims Division of the Provincial Court.
Copies of this order are attached to the Tenant's copy of this Decision. The Landlord maybe held liable for any enforcement costs incurred by the Tenant.

Conclusion

The Tenant is granted monetary relief in the amount of $73.14. The remainder of the Tenant's monetary claim is dismissed without leave to re-apply.

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: October 26, 2017

Residential Tenancy Branch