Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNR, RPP, FF

Introduction

This was a cross-application hearing.

On September 26, 2017 the landlord applied requesting compensation for damage to the rental unit, damage or loss under the Act, unpaid rent and to recover the filing fee cost from the tenants.

On November 23, 2017 the tenants applied requesting return of personal property, compensation for damage or loss under the Act and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

A review of evidence supplied by each party occurred at the start of the hearing. It took a considerable period of time to determine what evidence had been given to each party, compared with that uploaded to the Residential Tenancy Branch on-line application system. After detailed review it was determined that all documents referenced had been served within the time limit set out in the Residential Tenancy Branch Rules of Procedure. The parties were asked to inform the arbitrator should any document referenced during the hearing not be in the possession of that party.

I note that the landlord application indicates the landlord is holding a security deposit. According to current Residential Tenancy Branch (RTB) policy this indicates the landlord has applied to retain the deposit.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act, unpaid rent and damage to the rental property?

May the landlord retain the security deposit in partial satisfaction of the claim?

Must the landlord be ordered to return personal property to the tenants?

Are the tenants entitled to compensation for damage or loss under the Act?

Background and Evidence

The current tenancy commenced on August 1, 2016 as a one year fixed term ending July 31, 2017. There was no dispute that the copy of the tenancy agreement supplied as evidence included a clause that required the tenants to vacate the rental unit at the end of the term. Rent was $1,590.00 due on the first day of each month. The landlord is holding a security deposit in the sum of $775.00.

The parties confirmed that the most recent tenancy followed a series of fixed term agreements that had been signed between the parties. The landlord provided a copy of a condition inspection report completed on July 21, 2009, at the time the initial fixed term tenancy commenced. As each subsequent fixed term agreement ended in August of the following year, a move-out inspection and new move-in inspection report was not completed. The parties agreed that the rental unit was new at the start of the initial tenancy and that no one else lived in the unit.

The landlord has made the following claim for compensation:

Sample rent amounts for area	4,000.00
Lock rekeying	99.75
Ceiling repairs	1,025.00
Strata charge back	2,000.00
Carpet cleaning	178.08
Cleaning	364.00
Lock and light bulbs	47.16
Document service costs	509.75
TOTAL	$8,223.74

An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under section 67 of the Act. “Costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the portion of the claim the landlord had submitted for registered mail is declined.

The tenants have made the following claim for compensation:

Replace damaged oven	415.28
Rekey lock	110.88
Cookware not returned	278.00
Breach quiet enjoyment	18,000.00
Breach of quiet enjoyment	1,200.00
Breach of quiet enjoyment	1,950.00
TOTAL	$21,954.16

The tenants submit that on July 10, 2017 they issued notice ending the tenancy, given to the landlord by email. The landlord responded and told the tenants to vacant by July 31, 2017, the final day of the fixed term. The tenants submit that in the past the tenancy agreements would be renewed, but that did not occur at the end of this fixed term.

Landlords' Claim:

There was no dispute that the tenants failed to pay rent for August and to September 11, 2017 when they vacated. The landlord has claimed the balance of September rent. The tenants pointed out that the rental unit was listed for sale and sold by the end of September. This was confirmed by the landlord.

A move-out inspection was completed on September 11, 2017; the original inspection report was used. The report indicated that a closet; bathroom ceiling fan, cabinet, mirror and toilet were not clean. The report referenced damage caused to the ceiling in the living room, dining area, two bedrooms and hallway from track light in the tenants had installed and then removed. The report indicated that the carpets needed cleaning and the locks needed to be changed. Tenant D.D. signed, disagreeing with the report.

There was no dispute that the tenants changed the locks to the rental unit, in the absence of an order allowing the tenants to do so. The landlord had the lock rekeyed on the day the tenants vacated. An invoice was supplied in support of the sum claimed.

The landlord stated that when the tenants removed track lights that had been installed throughout the unit dents were left in the textured ceiling. Photographs of the ceiling damage were supplied as evidence. The landlord supplied a September 20, 2017 invoice for repair of the ceiling, in the sum of $1,000.00 plus tax.

The tenants responded that they were not left with enough time to make the repair to the ceilings. The tenants did remove the light fixtures but ran out of time. If the landlord had not harassed the tenants then the tenant states the repair could have been completed.

The rental unit is in a strata building. On August 4, 2016 a window was damaged in the unit. The landlord said that the tenants failed to cooperate with the contractors who

attempted to make the repair. The tenant thwarted entry to the unit on multiple occasions. The landlord reviewed a number of dates when notice of entry had been issued by the strata council, but access was denied. The strata council was issuing the notices of entry up until October 31, 2016. Sometime around September 2, 2017 the landlord had become aware of the fact the tenants were not allowing entry. Based on a subsequent notice of entry issued by the landlord, the contractor was granted entry on November 2, 2016 and the repair was completed.

The landlord has claimed the fines imposed by the strata for loss related to the tenant's failure to allow access to the contractors. An October 2, 2017 receipt in the sum of $1,503.76 was issued by the strata council to the landlord for payment of the charge-back costs in occurred when entry was not effected. When asked, the landlord confirmed that the tenancy agreement did not include a clause setting out the strata council as agent for the landlord.

The tenants responded that they were not given any warning of the fine imposition. The landlord did not provide any opportunity for the tenants to dispute the fines, nor did the landlord dispute the fines. The tenants were not made aware of the fines until a letter was received on September 6, 2017.

The landlord has claimed the cost of having the carpets professionally cleaned on September 2, 2017. Three areas of stains were left on the bedroom carpet, which could be seen in photographs supplied by the landlord. A September 21, 2017 invoice was supplied as evidence.

The tenants responded that the stains were actually indentations from the desk. The tenants said that dust from concrete under the carpets came up through the carpet. The tenants steam cleaned the carpets the month prior to vacating and that the marks in the photographs would have only been concrete dust.

The landlord has claimed the cost incurred for cleaning the unit. A September 28, 2017 invoice was supplied. I note that the invoice indicates the service was provided on April 29, 2017. The address where the cleaning occurred appears to have been transposed. This inconsistency was not raised during the hearing. A lock was also vandalized and had to be replaced. The landlord provided copies of receipts for these costs incurred in September 2017.

In reference to the items marked as dirty on the inspection report; the tenants stated that the bathroom fan was an oversight. The toilet was clean, but there may have been a bit of dust from drywall sanding the tenants had completed. The tenants said everything else was clean.

The tenants said they did install an interior door safety latch that was not removed. The landlord did not need to replace this latch, only remove it. The tenants could not locate 40 watt bulbs to replace those that had been in the unit.

As the tenants did not supply a service address at the end of the tenancy the landlord has claimed the cost of retaining a skip tracing company. An invoice in the sum of $295.00 plus tax was issued on September 26, 2017 for the cost of locating the tenants' place of residence. That information was then used by the landlord to serve the tenants with notice of this hearing and evidence.

The tenants confirmed that a written forwarding address was not given to the landlord. The tenants said the landlord was told to use the emergency contact address given at the start of the tenancy in July 2009.

Tenants' Claim:

The tenants said that the landlord is holding cookware that belongs to the tenants. The landlord confirmed that they do have the cookware that was left in the unit by the tenants. During the hearing an attempt was made to establish a date the tenants could attend to retrieve the property. The tenants refused to supply a date or time that they or an agent would retrieve the cookware. The tenants have claimed the cost of the cookware, in the sum of $278.00.

The tenants allege that on July 5, 2017 the male landlord had a violent outburst in the rental unit and hit the tenants' counter-top oven. The tenants provided a photograph of the oven, which shows a dent to an upper corner. The oven is three years old and cannot be repaired. The damage was willful and the landlord should pay for repair.

The landlord denied any damage was caused to the oven; stating that no one touched the oven.

During the hearing the tenants' claim made in relation to rekeying the locks was dismissed. The tenants confirmed they did not have an order allowing them to rekey the locks.

The tenants have made a claim in the sum of $18,000.00 for the loss of quiet enjoyment from July 2010 to September 2017. This claim covers a period of time that encompasses previous tenancies. As explained during the hearing I was willing to hear the testimony in relation to the previous tenancies. I have considered the submissions made by the tenants only in relation to the tenancies that commenced August 1, 2015 and August 1, 2016. An explanation is set out in my analysis.

The most recent tenancy commenced August 1, 2016. During that tenancy the tenants issued six complaints regarding a loss of quiet enjoyment as the result of smoke entering their unit. The parties confirmed that the strata has a no smoking policy in the

building. The tenants submitted three photographs taken of individuals smoking on the patio below their unit during 2016 and 2017. The tenants had to close their windows in the hot summer months, as they could not tolerate the smell of smoke.

Between April 2015 and September 2015 the tenants made six complaints regarding smoking. Specific dates were not supplied by the tenants.

The tenants said they were not aware of any fines being issued against those who were smoking and breaching the strata rules. The tenants said if they had been smoking they would have been fined. The tenants' claim is in relation to the absence of evidence that the strata took any steps to fine the smokers, who were disrupting the tenants' right to quiet enjoyment. The tenants' claim is made in the sum of $400.00 per complaint made.

The landlord supplied a record of all contact made with the strata management once complaints of smoking were made by the tenants. Between August 1, 2015 and July 31, 2016 the landlord received three complaints regarding smoking. Each complaint resulted in an email to the strata council requesting follow-up and indicating that fines would be imposed. Between September 8, 2016 and September 19, 2016 the landlord received five complaints, each of which was forwarded to the strata council within a matter of several days. In 2017 the tenants made three complaints directly to the strata; May 29, June 6 and 8, 2017. The landlord was unaware of those complaints until the tenants' evidence was received. The landlord said that in certain instances of complaints made by the tenants the landlord was made aware of enforcement steps taken, going back to 2010. The landlord supplied copies of emails sent to the strata in relation to the complaints made.

There was evidence supplied that indicated the tenants were told by the strata council to send complaints directly to the landlord. The strata informed the tenants that they would be dealing with any proper complaints that provided the date and time of infractions.

The tenants have claimed a further $1,200.00 in compensation for damage or loss under the Act as a result of contractor negligence which is related to a window being broken. The exterior of the building was being worked on and the possibility of access to the rental unit to allow repairs meant the tenants could not be out of town for work or holidays as they were on constant 24 hours' notice of the possibility of entry. This occurred from August 4, 2016 to November 7, 2016.

The tenants claimed a further $1,950.00 in compensation for the loss of quiet enjoyment as the result of building repairs and disturbances. This sum of broken down:

- $350.00 from July 18, 2016 to November 7, 2016 for loss of the balcony;
- $700.00 from July 18, 20116 to November 7, 2016 for loss of the living room as the tenants' bar b q had to be removed from the balcony; and

- August 1, 2016 to December 15, for excessive noise of grinders and hammer drills, hammer and chisel work between 8 a.m. and 5 p.m. Monday to Friday.

The tenants submit that they would be told the day prior of the need to enter the rental unit. The contractor would never show up to repair the window. The tenants said that they were "locked" to the location, waiting for the contractor to enter and made the window repair. The tenants were held hostage, waiting for the contractor, who was negligent. The claim relates to the loss of freedom.

The landlord failed to inform the tenants of the exterior work that was to be completed in the building. From July 18 to November 7, 2016 the tenants had to keep the bar b q in the living room as they had nowhere else to put it while work was being completed. The tenants did not discuss this with the landlord; who should have been aware of the loss of use of space as the landlord had been in the unit and had seen the bar b q nine days after it had been placed in the living room.

The tenants confirmed that the landlord was not issued any notice setting out their concerns regarding the sounds of the repairs being carried out or the loss of use of living room space. The landlord was aware of the noise and at one point the landlord told the tenants' the landlord had no idea how long the construction was going to last.

The landlord responded that on June 1, 2016 all occupants of the building were issued notice of the construction. In January of 2016 a notice was posted in the building and mailed to all occupants. The landlord said the tenants were well-aware of the construction that was to take place. The landlord said that the tenants did not suffer any loss in relation to the window repair. The strata had attempted entry on five occasions; the tenants had not cooperated. There was no loss to the tenants.

The landlord stated that the tenants never issued any complaint regarding the construction or the bar b q. The tenants knew how to communicate with the landlord but failed to issue any concern with the construction.

The tenants said that they were never given notice of the work on the building and if they had, what difference would that have made. The tenants would not be able to go on holiday for fear of damage to their home and problems should access be needed.

When asked for dates and times of disturbances the male tenant said that he worked out of the home at times and was home during the day at other times. No dates or times were provided.

Analysis

I have considered the evidence before me and made findings, on the balance of probabilities and based on the legislation, policy and the Regulation.

I have considered the obligation of both claimants to take reasonable steps to minimize the losses claimed. The requirement to minimize a claim is based on section 7(2) of the Act, which provides:

> *(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.*

Landlords' Claim:

In relation to the claim for unpaid rent and loss of rent revenue, a tenant is required to pay rent up until the time a tenancy ends. If a tenant over holds in a rental unit the tenant is then required to pay per diem rent for each day that the tenant occupies the rental unit.

The landlord was using a method of consecutive fixed term tenancy agreements, which the tenants signed, requiring the tenants to vacate at the end of each term. In previous tenancies the parties reached agreement by the end of each term, to sign a new fixed term agreement. The signing of another contract was voluntary on the part of the parties. The landlord chose not to sign another agreement in 2017 and the tenants gave email notice they would vacate July 31, 2017.

Therefore, I find, pursuant to section 44(1)(b) of the Act that the tenancy ended effective July 31, 2017, as required by the tenancy agreement signed by the parties.

As the tenants remained in the rental unit until September 11, 2017 I find, pursuant to section 65 of the Act that the landlord is entitled to compensation in the sum of $1,590.00 and $542.52 per diem rent from August 1, 2017 to September, 11, 2017, inclusive.

There was no evidence before me that the landlord made any attempts to rent the unit after the tenants vacated. In the absence of an attempt to mitigate the loss of rent revenue beyond the time the tenants vacated I find there is no basis for a claim of further rent revenue loss. The landlord did not mitigate the loss and, instead, sold the unit that month. Therefore, the balance of the claim for rent is dismissed.

A tenant is allowed to change the locks to a rental unit only if an order is issued pursuant to section 70(2) of the Act. The tenants confirmed they had no such order. Therefore, I find the landlord is entitled to cost of lock rekeying, as claimed.

I have considered Section 37(2) of the Act, which requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The tenants confirmed that the ceiling damage was due to light fixtures they installed and then removed at the end of the tenancy. There was no evidence before me that the landlord interfered with the tenants' ability to repair the ceiling. The tenants gave notice well before they vacated and over-held an additional six weeks, which should have provided ample opportunity to remove the fixtures and make any repairs prior to vacating. Therefore, I find that this damage was due to the actions of the tenant and that the landlord is entitled to the cost for repair, as claimed.

Section 29 of the Act provides the steps that must be taken when notice of entry is required to a rental unit. There was no evidence before me that indicated the landlord had assigned the strata council as agent for the landlord; which would have entitled the strata council to act on behalf of the landlord. There was no evidence that the tenants had been provided with any written notice of the right of the strata council to act as agent. Therefore, I find that the tenants' lack of cooperation with the strata council was a matter that the landlord had to then deal with by issuing proper notice of entry.

A tenant does not provide permission for entry and does not have the right to deny entry when notice is given in accordance with section 29 of the Act. Notice posted to a door by a landlord or the landlords' agent, is deemed served three days later, with entry allowed the next day.

While the tenants' apparent refusal to cooperate with the strata council appears uncooperative, once proper notice of entry was issued by the landlord, it appears the tenants allowed entry and the repair was completed. If anything, I find that the landlord was required to take steps, by issuing notice of entry, as soon as the landlord became aware of the need for entry. The landlord eventually issued notice, but not until costs had been incurred by the strata. I can find no cause to support the claim for fines imposed by the strata. The landlord simply had to issue proper notice of entry. If entry had been thwarted the landlord could have taken steps to evict the tenants for interference in the landlords' lawful right. Therefore, I find that the claim for strata chargeback is dismissed.

From the evidence before me I find that the bedroom carpet was stained. The photograph shows marks on the carpet. The tenants supplied no evidence of concrete dust coming up from the floors; only supposition. Therefore, I find that the cost for carpet cleaning to remove the stains is reasonable and that the landlord is entitled to compensation as claimed.

From the evidence before me I find that the rental unit was reasonably clean when the tenants vacated. It is not unexpected that a landlord may need to complete some additional cleaning and items such a bathroom fan can be easily missed. The condition inspection report pointed to very few items that were dirty at the end of the tenancy. Therefore, I find that the claim for cleaning is dismissed.

The tenants confirmed they installed a lock and did not replace the lights bulbs. Therefore, I find that the landlord is entitled to costs claimed for these items.

Section 38(1) and 39 of the Act both reference the requirement of a tenant to provide a written forwarding address to the landlord. While the tenants may have told the landlord to use the emergency contact address provided in 2009; that fails to meet the requirement of the Act. When the tenants failed to provide a written forwarding address the landlord took what I find was a reasonable step, by hiring a professional company to locate the residence of the tenants. Therefore, based on the failure of the tenants to provide a written forwarding address at the end of the tenancy, I find that the landlord is entitled to compensation for the costs incurred to trace the tenants.

The landlord is entitled to the following compensation:

Sample rent amounts for area	4,000.00	2,132.52
Lock rekeying	99.75	99.75
Ceiling repairs	1,025.00	1,025.00
Strata charge back	2,000.00	0
Carpet cleaning	178.08	178.08
Cleaning	364.00	0
Lock and light bulbs	47.16	47.16
Document service costs	509.75	509.75
TOTAL	$8,223.74	$3,992.26

The balance of the landlords' claim is dismissed.

Tenants' Claim:

I have considered the claim made by the tenants, dating back to the initial fixed term tenancy that commenced in 2010. I find that the parties entered into a series of fixed-term tenancies that ended on July 31 of each year; with the first ending on July 31, 2010. The landlord came to the hearing prepared to respond to the total claim made by the tenants; therefore, I find that there is no prejudice to the landlord that the tenants' claim be considered in relation to previous tenancies.

Section 60(1) of the Act provides:

Latest time application for dispute resolution can be made

60(1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.

Pursuant to section 60(1) of the Act, I find that the tenancy that commenced on August 1, 2014 and ended on July 31, 2015 required an application be made no later than July

31, 2017. Therefore, as the tenants applied on November 23, 2017; I find that the tenancies pre-dating the tenancy that commenced on August 1, 2014 are outside of the time limit by which an application must be made.

Therefore, I find that the portion of the tenants' claim that may be considered is for the tenancy that commenced on August 1, 2015, August 1, 2016 and August 1, 2017.

In relation to the request for an order for return of the tenants' property that was left in the unit by the tenants; I find that the tenants are free to retrieve that property. During the hearing the tenants refused to supply a date or time that they would retrieve the personal property. The tenants said the landlord should have the property delivered to the tenants. I find a request for delivery unreasonable. During the hearing the tenants were instructed that they must contact the landlord with a date and time that they or an agent will retrieve the property. The tenants have the landlords' contact information.

The landlord may refer to the Residential Tenancy Regulation for guidance on disposal of the property should the tenants fail to make arrangements to retrieve the property within the time limits set out in the Regulation. The tenants' claim confirms that the cookware is valued at less than $500.00.

As a result of my finding in relation to return of the property I dismiss the claim for replacement of the cookware and any order the landlord take additional steps to return the cookware. It is up to the tenants to provide a date and time they will retrieve that property.

As the tenants did not obtain an order allowing the tenants to change the locks I find that the claim for locks is dismissed.

Section 28 of the Act provides:

Protection of tenant's right to quiet enjoyment

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenants have described a loss suffered as the result of waiting for the contractor to enter their home. This claim competes directly with the landlord submissions that the tenants had thwarted entry by the contractor. If the tenants had been given proper notice of entry by the landlord or an agent of the landlord, then entry could have been achieved. The tenants have no right to deny entry and are not entitled to any compensation for remaining in the rental unit, believing that their presence was required, for any reason. If proper notice is given then a landlord may enter, with or without a tenant present. I can find no reason the tenants should be compensated for the time spent expecting entry might be requested. Therefore, I find that the claim for loss due to contractor negligence and not being able to be out of town has no substance and is dismissed.

From the evidence before me I find that it is more likely than not that all occupants of the building were notified of the upcoming construction. After hearing from both parties I find that I prefer the testimony of the landlord over that of the tenants. The landlord supplied evidence of the dates notices were issued and dates that notices were mailed to the occupants. I found the tenants' general allegation that they were completely unaware of the construction project lacked the ring of truth.

As with a landlord, a tenant must make an attempt to mitigate a loss claimed, as set out in section 7 of the Act. The tenants did make complaints regarding smoking and I am satisfied by the detailed evidence supplied by the landlord, that each complaint was submitted to the strata council. A strata council is not required to notify complainants of actions taken against others. There was no evidence before me that the strata had not, in fact, taken appropriate action and fined the smokers. What is clear is that the landlord took what I find were appropriate steps to submit the complaints. Further, there was no evidence the tenants took steps earlier, to apply requesting orders the landlord deal with the issue of smoking. Instead, I find that the tenants allowed the claim to build, rather than taking steps to minimize the claim.

There was also no evidence before me that the tenants took any steps to mitigate the loss now claimed in relation to the loss of living room space and disturbances alleged during construction. The tenants confirmed they had not made any complaint during the time they allege disturbances and a loss are claimed to have occurred. The tenants have made an application requesting compensation based on an assumption the landlord should have known they were suffering a loss.

Therefore, I find that the tenants' claim for loss of quiet enjoyment is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the $100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $775.00**,** in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order for the balance of $3,317.26**.** In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of $3,992.26. The balance of the claim is dismissed.

The landlord may retain the security deposit in partial satisfaction of the claim.

The landlord is entitled to filing fee costs.

The tenants' claim is dismissed.

This decision is final and binding 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: December 19, 2017

Residential Tenancy Branch