



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNSD MNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order allowing the landlords to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Two parties were present for the hearing; Landlord N.R. attended for the landlords, while tenant M.M. attended for the tenants. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

This matter had previously been adjourned with the consent of both parties on February 19, 2018. At that hearing, the tenant said she had not been provided with sufficient time to review the landlords' evidentiary package. At the March 19, 2018 hearing, the tenant said that following receipt of the landlords' evidentiary package in "the first weeks of January 2018" she had reviewed the documents and was prepared to proceed with the hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Can the landlords retain the tenants' security deposit?

Are the landlords able to recover the filing fee?

Background and Evidence

The landlord explained that this tenancy began in September 2011 and ended in November 2016. Rent was \$1,200.00 per month rising to \$1,600.00, and a security deposit of \$600.00 collected at the outset of the tenancy, continues to be held by the landlords.

The landlords are seeking a monetary award of \$25,765.54 for damage to the rental unit. This figure also represents unpaid rent and utilities, labour related to repair work and other miscellaneous expenses which the landlord said were incurred. Specifically the landlords seek an Order as follows:

ITEM	AMOUNT
Garage Door	\$2,287.22
Carpets & Vinyl	5,753.99
Countertop	2,501.00
Interior Doors	1,124.64
Kitchen Faucet	456.96
Paint I	186.90
Paint II	122.23
Tool Rental	38.25
Hardware I	32.05
Hardware II	13.91
Blinds	535.50
Home Depot	784.68
Paint III	12.57
Damage to Washer/Dryer	1,059.50
West Kelowna Utility	1,304.85
West Kelowna Transfer Tax	352.96
Unpaid Rent for November 2016	1,600.00
Dump Fees	150.00
Labour	7,300.00
TOTAL =	\$25,765.54

The landlord explained that this house was brand new when the tenants took possession of it in September 2011. He said that following their departure in November 2016 he discovered numerous issues with the rental unit and felt that an unreasonable amount of damage had been caused in the rental unit.

The landlord said that numerous large items in the home were damaged during the tenancy, including the garage door, the carpets, the counter tops, interior doors and the washer and dryer. The landlord said that he did not know how many of these items had been damaged but said he was told by tenant, D.B. that the garage door had been damaged by his daughter who was attempting to learn how to drive. In addition, the landlord said that the counter tops were burned and appeared to have hammer marks on them, leading the counters to be replaced following the tenancy. The landlord described the washer/dryer as requiring replacement because of wires which were burned and leaking that was found on the interior of the machines. He said that the circuit boards were replaced and that these machines were not replaced following the tenancy, because he chose not to re-rent the suite, following the tenants' departure.

Furthermore, the landlord described stained carpets, vinyl flooring which had been ripped, interior doors which had holes in them, blinds which were damaged and a kitchen faucet which did not work. The landlord said all interior walls required painting following the tenants' departure, as numerous scuff marks were present in the unit. At the hearing, the landlord called witness A.W., who was a contractor hired to repair the home following the tenants' departure. A.W. testified that a large number of repairs were required in the rental home following the tenancy, and that he spent a significant amount of time fixing the home to an adequate standard.

The landlord is also seeking compensation for utility bills which he said were unpaid at the end of the tenancy, and for rent for the month of November 2016. The landlord alleged that the tenants failed to provide him with adequate notice and that he suffered a loss of rent for this month, after their departure on November 5, 2016.

The tenant largely disputed the landlords' application for a monetary award. She said that only the upstairs of the home was new and that the basement area was largely unfinished. The tenant did not recall any incident involving her daughter crashing into the garage door as she was learning to drive, and in fact said that her daughter was too young to drive during the time of the tenancy. Furthermore, the tenant said that she had informed the landlords during the tenancy, that some issues were present with the garage door, noting that it did not close properly and appeared off centre. The tenant said these issues forced the tenants not to use the garage door during the tenancy.

The tenant could not identify any problems with the kitchen counter or the washer and dryer, and said that both were left in "working" condition when the tenants moved out of

the rental unit. The tenant disputed that any damage as described by the landlord was present on the kitchen counter, or on the washer/dryers.

The tenant acknowledged that some aspects of the landlords' application for dispute had some merit, particularly, the claims concerning carpets, interior doors and the unpaid utilities. The tenant questioned whether or not she should be liable for the replacement of carpets and the vinyl floor which she argued was replaced with much more expensive finishing and disputed the number of doors which required replacement. In addition, the tenant challenged the fact that the walls were re-painted, asking whether or not she should be found liable for their re-painting after several years of residence.

The final portion of the landlords' application concerned unpaid rent for November 2016. The landlord argued that the tenants did not provide sufficient notice and as a result suffered a loss of rent for November 2016. The tenant argued that the landlords were well informed of their intention to vacate the property and had been informed on several occasions of their intention to vacate the property.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove their entitlement to a monetary award.

During the hearing, the tenant acknowledged that some amount of the landlords' application was with merit and agreed to pay the amount related to the unpaid utilities. I will therefore not examine this portion of the landlords' application and will award the landlord a monetary award for the \$1,304.85 in unpaid utilities.

I will begin by analyzing the landlords' application related to a replacement of the garage door, and then will examine the rest of the application in descending order as displayed above in the table on page two.

The landlord explained that he was seeking replacement of the garage door because of damage which is purported to have occurred to the door, as a result of the tenants' daughter crashing in to it. The tenant disputed this argument saying that her daughter was not of driving age when the tenants occupied the rental unit, and noting that at no point during their tenancy did their daughter ever operate a motor vehicle. Furthermore, the tenant said that some issues with the garage door had been identified to the landlords during the course of their tenancy, and that these problems had prevented the tenants from using the garage door during the entire period of their tenancy. When questioned as the source of his information, the landlord conceded that he did not know the true reason for the garage door's damage, but said that he had been informed by tenant D.B. that their daughter had caused the damage. I find that the landlord has failed to demonstrate how the door was damaged and was unable to adequately identify a source of breakage. I accept the tenant's testimony that her daughter was not of legal driving age, and at no point had access to a vehicle or at any point drove into the garage door. For these reasons, I dismiss this portion of the landlords' application.

During the hearing, the tenant acknowledged that the carpet had been subject to some wear and tear but disputed the amount of money sought by the landlords. She argued that the landlords had replaced the carpets and vinyl flooring with a product which was of higher quality, and therefore more expensive than the carpets and vinyl flooring present during the tenancy.

Residential Tenancy Policy Guideline #40 provides a table on what is to be considered the "useful life" of household goods and when items are considered to have been damaged beyond "normal wear and tear." This *Guideline* examines the expected lifetime of items under normal circumstances.

The *Guideline* notes, that the useful life of a carpet and artificial flooring is 10 years, or 120 months. As the carpets and vinyl flooring were new when the tenants first occupied the unit in September 2011, I will examine their useful life from this starting point. Evidence presented at the hearing by both parties explained that the tenants vacated the home in November 2016. The carpets and vinyl flooring were therefore 62 months into their useful life. I will award the landlords a monetary award equivalent to 58 months of remaining life in the carpets and vinyl flooring, or \$2,780.52 (calculated at \$5,753.99 divided by 120 months = \$47.94/month).

The landlords seek \$2,501.00 for the replacement of countertops which were described as being burnt and "hit with a hammer." The tenant denied all aspects related to this portion of the landlords application for a monetary award. The tenant said that she could

not recall any damage to the counter tops and did not remember any burn marks or breakage. As part of the landlords' evidentiary package, the landlords' supplied an estimate from a company which noted, "quote is very much an estimate, based on customer's measurements and cannot be finalized until measure is complete." I find that the landlord has failed to sufficiently demonstrate that the countertops required replacement. While, I accept the testimony of the landlords' witness that a significant number of repairs were required in the rental unit following the tenants departure, I find that the landlords did not adequately show that damage to the counter tops were so severe as to warrant their replacement. Furthermore, while photographic evidence was submitted showing various items in the home which required repairs, I note that no photos of the damaged counter tops were submitted showing the alleged burns or hammer marks. For these reasons, I dismiss this portion of the landlords' application.

The tenant conceded that some of the doors required replacement and had been subject to damage but questioned whether the replacement of all interior doors was necessary. A review of the landlords' evidentiary package shows photos of damaged doors and an invoice for their replacement. I find the landlords' evidence credible and accept that the doors for which he is seeking replacement are those for which the landlord is seeking compensation. For these reasons, I allow the landlord to recover the entire amount of \$1,124.64, sought for the replacement of interior doors.

Testimony from the landlord explained that the kitchen faucet was broken and required replacement. As part of his evidentiary package, the landlord submitted an invoice showing the replacement cost associated with the repair. The tenant denied that anything was wrong with the faucet at the conclusion of the tenancy. A review of the Condition Inspection Report completed at the end of the tenancy notes, "tap damaged" but there is no indication as to the nature of the damage.

I find that the invoice and figure submitted to the hearing shows that the landlords are seeking a return of expenses related to both a tap and a top mount sink. I find that the inconsistent nature of the landlords claim related to a broken faucet makes it difficult to determine the scope of the damage which was suffered by the faucet, and why he has claimed for a replacement of a sink, when only "tap damage" is recorded on the Condition Inspection Report. I dismiss this portion of the landlords' application due to the inconsistent nature of the claim being made and the absence of any description of the actual damage to the faucet and sink makes it difficult to ascertain whether it arose from misuse or normal wear and tear throughout the tenancy.

I will examine the issue of paint as a single entity. In total, the landlords are seeking a monetary award equivalent to \$470.03. The landlord argued that the hearing, that significant painting was required in the rental unit after the tenants had vacated the home. Referring back to *Residential Tenancy Policy Guideline #40*, I find that the useful life for interior painting to be 4 years. As this tenancy extended beyond 4 years (September 2011 to November 2016), I find that the interior paint was beyond its useful life and find that the landlords are not entitled to a return of any amount sought for interior paint.

I will next examine the issues related to the replacement of the blinds, for damage to the washer & dryer and then will focus on the miscellaneous hardware expenses, the transfer to tax, unpaid rent and the labour associated with the repairs.

At the hearing, the tenant conceded that some parts of the blinds were damaged but questioned whether they required replacement. *Guideline #40* notes, that the useful life of blinds to be 10 years, or 120 months. As the blinds were new when the tenants first occupied the unit in September 2011, I will examine their useful life from this starting point. Evidence presented at the hearing by both parties explained that the tenants vacated the home in November 2016. The blinds were therefore 62 months into their useful life. I will award the landlords a monetary award equivalent to 58 months of remaining life in the blinds, or \$258.82 (calculated at \$535.50 divided by 120 months = \$4.46/month).

The parties presented conflicting testimony regarding the state of the washer/dryer. The landlord argued that the washer/dryer had interior leaks, suffered from burnt wires and he said he replaced the circuit board on which these machines operated. The tenant meanwhile said that she could not recall any issues with either machine and recalled them being in working condition at the end of the tenancy. After considering the evidence before me and the landlord's testimony, I find that the landlord has failed to establish that the washer/dryer suffered from the damage as described. The landlord produced an invoice from when the washer/dryer was first purchased but produced no invoice for repairs or photos showing the alleged damage. For these reasons, I dismiss this portion of the landlords' application.

In addition to an invoice for unpaid utilities, the landlords have applied for a monetary award of \$352.96 related to transfer to taxes of utility services. A review of the tenancy agreement signed between the parties reveals no responsibility for the tenants to cover such a tax. Furthermore, *Residential Tenancy Policy Guideline #1* notes, "a term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility

billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined by the Regulations.” For these reasons, I dismiss this portion of the landlords application.

The landlord has submitted a large number of invoices related to miscellaneous items that were purchased from the hardware store and which were used by the contractor. In addition, an invoice for a rental of equipment was included with the landlords’ application. I find that many of these invoices relate to paint, and items needed to paint the unit. I will therefore allow the landlord to recover ½ of the invoices from the hardware store, along with the entirety of his equipment rental. I allow the landlord to recover \$415.32 for miscellaneous hardware items and \$38.25 for the equipment rental.

The final portions of the landlords’ application concern unpaid rent for the month of November 2016, along with a return of the associated labour required to repair the rental unit.

I decline to award the landlords rent for the entire month of November 2016 because no attempts were made to re-rent the unit following the tenants’ departure. This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

At the hearing, contractor A.W. explained the nature and scope of the work required in the home following the tenants’ departure. He said the invoice provided to the landlords was a true reflection of the labour required. *Residential Tenancy Guideline #1* notes, “The tenant must maintain *reasonable health, cleanliness and sanitary standards*. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused either deliberately, or as a result of neglect by the tenant or their guests. The tenant is not responsible for reasonable wear and tear to the rental unit.” After reviewing the application and my above analysis, I find that some aspects of the required repairs were the result of normal wear and tear, some were the result of neglect and others were the fault of no person. I therefore allow the landlord to recover 1/3 of the labour costs associated with repairs to the rental unit. I order the tenant pay \$2,433.33.

Conclusion

I issue a Monetary Order in the landlords' favour in the amount of \$7,855.73 against the tenants based on the following monetary awards:

ITEM	AMOUNT
Unpaid Utilities 1,304.85	\$1,304.85
Replacement of Flooring/Carpet	2,780.52
Replacement of Interior Doors	1,124.64
Replacement of Blinds	258.82
Equipment Rental	38.25
Miscellaneous Hardware	415.32
Labour Costs	2,433.33
Return of the Filing Fee	100.00
Less Security Deposit	(-600.00)
Total =	\$7,855.73

The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 23, 2018

Residential Tenancy Branch