



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenant for damage to the rental unit, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 23, 2018. The Tenant, and the Landlord, M.P., called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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 *Residential Tenancy Branch 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. Are the Landlords entitled to monetary compensation from the Tenant for damage to the rental unit?
2. What should happen with the Tenant's security deposit?
3. Should the Landlords recover the filing fee paid for their Application for Dispute Resolution?

Background and Evidence

The Landlords filed a Monetary Orders Worksheet wherein she claimed the sum of \$2,225.81 for the following:

Front door repair (estimate)	\$1,000.00
Mask and sander	\$13.49
Nails and staples	\$15.63
Panels and paint tray	\$243.87
Paint to fix wall	\$276.21
light switch and electrical outlets covers	\$14.57
Cost to change locks (estimate)	\$250.00
Cost to replace 2 recycling bins	\$100.00
Paint supplies	\$62.04
Cost or replacement trim	\$250.00
TOTAL CLAIMED	\$2,225.81

In support of her claim the Landlord testified as follows.

The Landlord testified that the tenancy began November 1, 2015. Monthly rent was payable in the amount of \$1,200.00. The Tenant paid a security deposit of \$600.00 and a pet damage deposit in the amount of \$600.00.

The subject rental unit is a three bedroom double wide manufactured home which was built in 1995. The Landlord stated that the walls of the manufactured home have paneling which is covered in a 3/8 thick drywall which is glued to the paneling. The construction of the walls is to minimize weight to ensure the home remains mobile.

The Landlord stated that the Tenant's ex-boyfriend punched through the bedroom wall, and due to the thickness of the walls, he punched right through the living room wall. As he made holes in the paneling and the paneling could not be matched it had to be replaced and then painted to match. The Landlord further stated that they attempted to mud and repair the drywall, but the drywall would not adhere.

The Landlord also testified that the Tenant, or a guest of the Tenant's, kicked in the front door creating a hole in the door and causing damage to the frame. The estimated cost to repair the door is \$1,000.00.

The Landlords also claimed that the all of the light switches and electrical covers were broken and needed to be replaced; as such they claimed the cost of replacing all the covers.

The Landlords also claimed the cost to replace the locks as they claimed that the Tenant did not return the keys to the rental unit at the end of the tenancy.

The Landlords also claimed the cost of replacing two recycling blue bins as they claimed that the Tenant removed them.

In support of their claim for compensation the Landlords provided photos of the rental unit taken at the end of the tenancy, the move in and move out condition inspection report as well as receipts for items purchased to repair the unit after the tenancy ended.

The Landlord also stated that the Tenant's pets damaged the carpets which resulted in them requiring replacement. They did not specify an amount for this on their Monetary Orders Worksheet and during the hearing M.P. claimed that she was not claiming compensation for this amount, only to note that the damage to the rental unit was more significant than the amounts claimed. Similarly, while no amount was claimed, the Landlords also noted that they had to clean the unit and tend to lawn care.

In response to the Landlord's claims the Tenant testified as follows.

The Tenant confirmed that her former boyfriend damaged the walls and the front door. She stated that she spoke to the Landlords about wanting to repair the damage and the Landlords told her not to.

The Tenant submitted that she should not be responsible for the cost as the Landlord did not simply patch over the walls, rather they took the whole wall out and re-panelled it.

The Tenant stated that she left one blue bin and the other was accidentally taken by another person.

The Tenant stated that she submitted a video of the house and only two light switches were broken; she confirmed that one was from her son playing baseball in the house. She submitted that the amount claimed by the Landlords was excessive for replacing inexpensive plastic covers.

The Tenant stated that she opposed the Landlords' request for the cost to rekey the door as she noted that the door is opened with a code and therefore there is no key; furthermore, she confirmed that she was never provided a key by the Landlords. She further stated that one time her son locked her out and she called the Landlords and asked for a key to which the M.P. responded that there was a key "on a shelf

somewhere in the rental unit". The Tenant stated that she never found this key and therefore did not have one to return.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

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 Landlords have the burden of proof to prove their 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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the tenant's and landlord's obligations in respect of repairs to the rental unit and provides as follows:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 21 of the *Residential Tenancy Regulations* provides that a condition inspection report is evidence of the condition of the rental as of the date of completion unless there is a preponderance of evidence to the contrary. In this case the Landlords submitted photos which confirmed the information contained in the reports. Based on this evidence and the testimony of the parties I find that the Tenant failed to clean and repair the rental unit as required by sections 32 and 37 of the *Act*.

I find that the Tenant is responsible for the cost to replace and repaint the paneling. There was no dispute that the Tenant's former boyfriend damaged the walls. I accept the Landlord's evidence that she made her best efforts to minimize her losses by trying to repair the drywall. I further accept her evidence that this was insufficient and

replacement and painting of the paneling was required. I therefore award her compensation for the costs to repair and paint the paneling.

That said, I note the Landlords claim the sum of \$276.21 for paint and \$62.04 for paint supplies for a total of \$338.25. I find this sum to be excessive based on the photos provided by the Landlords, as well as her testimony that two panels were damaged, such that presumably only two rooms needed to be painted. I also note that the receipts submitted indicate the Landlords purchased six gallons of paint, which again, suggests the Landlords painted more than the two damaged rooms, and likely the entire home. The evidence before me was that the rental unit had the original paint from 1995. *Residential Tenancy Branch Policy Guideline 40* provides that interior paint has a useful building life of four years; as such I find it likely that the rental unit would have required painting in any event of the tenancy, and I therefore only find the Tenant is responsible for the cost to paint the areas which were damaged and/or replaced as a result of the panels not matching. I therefore award them the nominal sum of \$150.00 for paint and painting supplies.

As I have accepted the Landlords' evidence that the panels could not be matched, thereby necessitating the replacement of all the panels, I also award them the cost of replacing the trim.

I also find that the Tenant's former boyfriend damaged the door and door frame. I therefore award the Landlords the estimated amount to repair the door.

The Landlords claimed there was a key somewhere in the rental unit; the Tenant denied such a key existed and submitted she opened and locked the door with the code only. Without corroborating evidence I am unable to prefer the evidence of either party. As the Landlords bear the burden of proving their claim, I find she has failed to prove her entitlement to compensation for the cost to rekey the door.

I also dismiss the Landlords' claim for replacement of one of the recycling bins as the Tenant claimed only one was accidentally taken.

The Tenant conceded that two electrical switch covers were broken. The Landlords' photos included photos of two broken covers. I am unable to find that all of them were broken as alleged by the Landlords and find it more likely they replaced them to match. I therefore award them the nominal sum of \$5.00 to replace two covers.

As the Landlords have been successful I award them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlords are granted monetary compensation in the amount of **\$1,827.99** for the following:

Front door repair (estimate)	\$1,000.00
Mask and sander	\$13.49
Nails and staples	\$15.63
Panels and paint tray	\$243.87
Paint to fix wall and paint supplies	\$150.00
light switch and electrical outlets covers	\$5.00
Cost to replace 1 recycling bin	\$50.00
Cost or replacement trim	\$250.00
Filing fee	\$100.00
TOTAL AWARDED	\$1,827.99

The Landlords may retain the Tenant's security and pet damage deposit in the amount of \$1,200.00 and are granted a Monetary Order pursuant to sections 38, 67, and 72 in the amount of **\$627.99**. The Landlords must serve this Order on the Tenant and may file and enforce it 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: April 30, 2018

Residential Tenancy Branch