



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROSSMORE PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on September 29, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing in person and were represented by M.F., legal counsel. The Landlord was represented at the hearing by L.L. and B.C., agents, and N.M., legal counsel. The Tenants and the Landlord's agents provided a solemn affirmation at the beginning of the hearing.

Counsel for both parties confirmed receipt of the Tenants' Application package and all documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The parties were instructed to refer me to any documentary evidence upon which they wished to rely. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants submitted a Monetary Order Worksheet, dated April 16, 2018, which summarized a monetary claim that exceeded my monetary jurisdiction. However, M.F., counsel for the Tenants, confirmed the Tenants are prepared to waive that portion of the claim for cleaning that caused the total claim to exceed \$35,000.00. The hearing proceeded with the agreement of the parties.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on June 1, 2016, and was expected to continue until June 1, 2017. However, the Tenants vacated the rental unit on June 30, 2017, after giving notice of their intention to do so on or before May 20, 2017. During the tenancy, rent in the amount of \$1,750.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$875.00, which was returned to the Tenants at the end of the tenancy.

The Tenants claim to have suffered losses as a result of renovation and repair work completed by the Landlord or agents. Specifically, the claim is in relation to tile replacement in the kitchen that began on April 6, 2017. The Tenants noticed dust in the rental unit and became concerned about their safety. They stayed at a hotel for two nights on April 6 and 7, 2017, and thereafter stayed with family members. According to S.B., the Tenants did not return to the rental unit, other than to water plants and take pictures. M.F. submitted that the Landlord was negligent and did not do what was required to protect the Tenants and their belongings.

First, M.F. confirmed the Tenants sought to be compensated for time spent cleaning the rental unit and their belongings. S.B. testified the Tenants spent “weeks” cleaning. In support, the Tenants submitted an estimate for professional silica dust abatement, dated May 3, 2017. The amount of the estimate was \$33,363.19. M.F. confirmed the estimate was submitted as a guide to help me determine an appropriate award to compensate the Tenants for the time they spent cleaning, but acknowledged the Tenants did not incur the expense. The Tenants also submitted a number of photographic images depicting dust in the rental unit. The photographic images were taken on April 6 and 20, 2017.

In reply, N.M. advised the work was undertaken to replace 30-35 tiles in the kitchen. It was anticipated the work would take 3-5 days. Although the work took longer than anticipated, N.M.

advised the rental unit was ready for move-in on April 19, 2017. In support, the Landlord submitted the contractor's file notes that indicated the rental unit was cleaned thoroughly on April 19, 2017, and was ready for the Tenants to return. The file notes stated:

...We cleaned the entire unit. All dishes were washed and cupboards cleaned out as there was lots of dust in them. All contents were washed and put back. Floors vacuumed and cleaned. There was a boat motor and large mixing tools in floor that were not cleaned as we couldn't lift them. Also there was a money case and a small figure case that were not cleaned as well as there were in closed cabinets. ssa was filled out and posted. All pictures have been uploaded to eclaim. Job is complete.

[Reproduced as written.]

The file notes also confirm a request by the Landlord's agent to bag the Tenants' clothing and take it to the laundry.

The Landlord also submitted a copy of an invoice, dated May 11, 2017, which included a breakdown of the Landlord's costs associated with cleaning the rental unit, and a lead risk assessment. Further, the Landlord submitted photographs of the interior of the rental unit that were taken by B.C. and the Landlord's contractor. The photographic images depicted an extremely cluttered living space. N.M. submitted that the condition of the interior of the rental unit prevented a more thorough cleaning.

Second, the Tenants claimed \$936.60 for silica wipe sampling in the rental unit and submitted an invoice for the amount claimed. The Tenants testified they Landlord was advised of their concerns about dust in the rental unit but that it was not cleaned properly. As a result, the Tenants arranged silica wipe sampling, which occurred on June 16, 2017. A report dated June 27, 2017, stated: "particulate matter observed on various surfaces within the residence were found to contain silica dust...a thorough cleanup of all the items in the residence is recommended to address any silica dust contamination."

In reply, N.M. submitted that none of the documents submitted suggested the presence of silica dust presented a health risk to the Tenants. However, M.F. referred to a lead risk assessment report obtained by the Landlord, dated April 17, 2017. Although no lead was found, the report suggested that the "cleanup does not require workers with hazmat training, but workers should be adequately protected against potential silica exposure." M.F. submitted that I can infer a hazard exists if precautions are recommended for workers.

On behalf of the Landlord, N.M. also noted the report stated: "During the inspection...the floor and countertops appeared to be relatively clean. Previous cleanup efforts of the particulate matter was observed on some items." N.M. submitted that the Landlord's contractor made

efforts to clean surfaces but that the cluttered condition of the rental unit prevented a more thorough cleaning.

Third, the Tenants claimed \$231.84 to clean a couch that was in the rental unit. The submitted it was not properly covered during construction and was “filled” with dust. A receipt was submitted in support, although the quality of the copy made it largely unreadable.

In reply, N.M. confirmed the copy the Tenants provided to the Landlord was legible. It indicated that cleaning was performed to address a black stain. In addition, N.M. referred again to the lead risk report, which indicated fabrics could be “HEPA vacuumed and/or washed under normal washing procedures to eliminate the dust.”

Fourth, the Tenants claimed \$368.37 for storage costs. On behalf of the Tenants, M.F. stated that some of the Tenants belongings had to be moved to storage until they could be cleaned. The Tenants claimed only part of their storage costs, which was reflected in receipts submitted with the Tenants’ documentary evidence.

In reply, N.M. confirmed it was the Tenants who gave notice to end the tenancy and that the Landlord should not have to compensate the Tenants for their decision to move.

Fifth, the Tenants claimed \$436.56 for hotel costs while the construction was taking place. On behalf of the Landlord, N.M. confirmed the Landlord was prepared to agree to this aspect of the claim.

Sixth, the Tenants claimed \$500.00 for spoiled food. On behalf of the Tenants, M.F. stated that dust contaminated food in the rental unit. In addition, some food in the fridge spoiled, allegedly due to the Landlord’s contractor turning off power to the rental unit. Receipts were submitted in support. Photographic images submitted depicted dust on cereal boxes and throughout the kitchen.

In reply, N.M. noted that receipts included items such as vitamins (\$103.97), chocolate (\$14.00), paper towels, pop, and candy. She submitted that these are not food items that should be compensated by the Landlord. N.M. also noted the receipts were dated April 11, and May 5, 16, 17, and 18, 2017, and submitted that it would not be reasonable to reimburse food costs incurred so long after the construction was completed.

Seventh, the Tenants claimed \$315.00 for lead testing in the rental unit. On behalf of the Tenants, M.F. suggested the report was justified because S.B. is a carpenter and is familiar with safety issues. Although the analysis confirmed that no lead was detected in the rental unit, M.F. submitted the test should have been completed by the Landlord before work began in accordance with a WorkSafeBC order. In support, the Tenants submitted a Chain of Custody Form, a two-page WorkSafeBC document, and a receipt for the amount claimed.

In reply, L.L. testified the Landlord is a long-time owner. She acknowledged that lead testing was not performed in the rental unit but that previous experience and testing with the same flooring materials in other units had confirmed that not lead was present.

Eighth, the Tenants claimed \$5,040.00 to clean numerous electronic devices. In support, the Tenants submitted an estimate in the amount claimed listing 28 items including: speakers, video game equipment, televisions, remotes, night vision goggles, guitars, laptops, kitchen appliances, and a boat motor. On behalf of the Tenants, M.F. advised that some of the items were not working, but did not elaborate.

In reply, N.M. noted the estimate confirmed the items had not been inspected, but that the technician was relying on information provided by S.B., although M.F. advised that the technician was provided with photographs of the items. In addition, B.C. testified that the rental unit is located in a somewhat industrial area near train tracks, suggesting that dust and particulate in the Tenants' belongings could have originated elsewhere.

Ninth, the Tenants claimed \$1,350.60 for new clothing. Receipts were submitted in support. On behalf of the Tenants, M.F. advised that construction dust infiltrated the Tenants' clothing. S.B. testified the Tenants were advised the construction would be brief. As a result, the Tenants took relatively few clothing items with them to the hotel. However, as they believed they could not safely return to the rental unit, the Tenants purchased new clothing. S.B. testified that some of the Tenants' clothing was also damaged as a result of the dust.

In reply, N.M. submitted the Tenants could have simply washed clothing, as suggested in the lead risk report referred to above.

The Tenants also sought to recover the filing fee paid to make the Application.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 case, the burden of proof is on the Tenants to prove the existence of the damage or 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.

With respect to the Tenants' claim for time spent cleaning, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover the amount claimed. The Tenants did not incur this expense. However, I am satisfied that the Tenants did have to spend time cleaning their belongings but find it is unlikely the Tenants spent weeks doing so, as claimed by S.B. I grant the Tenants a nominal award of \$500.00 for their time spent cleaning their belongings.

With respect to the Tenants' claim for \$936.60 for silica wipe sampling in the rental unit, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover the amount claimed. At the time sampling was conducted – roughly two months after the work was completed – the Landlord's agent had already conducted some cleanup of the rental unit (albeit limited by the cluttered condition of the rental unit). In addition, the Tenants' evidence confirmed they did not return to the rental unit, resulting in limited risk, if any, to the Tenants. I find I am not satisfied that such a risk to the Tenants existed. Further, the Tenants had already given notice to end the tenancy on or before May 20, 2017, before the sampling was conducted. This aspect of the Application is dismissed.

With respect to the Tenants' claim for \$231.84 to clean a couch that was in the rental unit, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover the amount claimed. As noted by N.M., the invoice submitted by the Tenants indicated that cleaning was performed to address a black stain. In addition, the lead risk report indicated fabrics could be "HEPA vacuumed and/or washed under normal washing procedures to eliminate the dust." This aspect of the Application is dismissed.

With respect to the Tenants' claim for \$368.37 for storage costs, I find there is insufficient evidence before me to conclude the Tenants are entitled to the amount claimed. While I accept that some of the Tenants' belongings needed to be cleaned as a result of the work performed by the Landlord and agents, I find it was not necessary to remove those belongings from the rental unit to do so. Further, as noted by N.M., it was the Tenants' decision to end the tenancy and move their belongings out of the rental unit. This aspect of the Application is dismissed.

With respect to the Tenants' claim for \$436.56 for hotel costs, N.M. confirmed the Landlord was prepared to agree to this aspect of the claim. I grant the Tenants a monetary award in the amount of \$436.56.

With respect to the Tenants' claim for \$500.00 for spoiled food, I find there is insufficient evidence to conclude the Tenants are entitled to recover the amount claimed. The receipts submitted by the Tenants included many non-essential food items such as vitamins, paper towels, and pop and candy. Further, although the receipts submitted also confirm the purchase of salmon, cheese, milk, and soup, I find there is insufficient evidence before me to conclude that refrigerated or non-perishable items such as soup would have been impacted. Nevertheless, after reviewing the receipts and other evidence submitted by the Tenants, I find it is more likely than not that dust created by the work made some of the Tenants' food items inedible. Accordingly, I grant the Tenants the nominal sum of \$100.00.

With respect to the Tenants' claim for \$315.00 for lead testing in the rental unit, which took place on April 12, 2017, I find there is sufficient evidence before me to conclude the Tenants are entitled to recover the amount claimed. The WorkSafeBC order submitted by the Tenants confirmed the Landlord "did not ensure that a qualified person inspected the building material to identify hazardous materials, such as asbestos and lead...in contravention of the Occupational Health and Safety Regulation..." The Landlord acknowledged that testing was not performed because of previous experience with similar materials in other rental units. I find the Tenants are entitled to a monetary award in the amount of \$315.00.

With respect to the Tenants' claim for \$5,040.00 to clean electronic devices, I find there is insufficient evidence before me to conclude the Tenants are entitled to recover the amount claimed. As confirmed by M.F., the Tenants have not incurred this expense. The evidence also confirmed that the estimate was provided without examining the electronic devices. Although M.F. submitted that some of the devices were not working, insufficient evidence linking the dust to the malfunctioning devices was not submitted. This aspect of the Application is dismissed.

With respect to the Tenants' claim for \$1,350.60 for new clothing, I find there is insufficient evidence to conclude the Tenants are entitled to recover the amount claimed. I find it is more likely than not that the Tenants' clothing items could have been retrieved from the rental unit and cleaned using normal washing procedures, as suggested in the lead risk report submitted into evidence. This aspect of the Application is dismissed.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary award in the amount of \$1,451.56, which has been calculated as follows:

Item	Amount allowed
Cleaning:	\$500.00
Hotel costs:	\$436.56
Food:	\$100.00

Lead testing:	\$315.00
Filing fee:	\$100.00
TOTAL:	\$1,451.56

Conclusion

The Tenants are granted a monetary order in the amount of \$1,451.56. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 25, 2018

Residential Tenancy Branch