



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNDL, MNRL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation, compensation for damages, compensation for unpaid rent and/or utilities and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The initial hearing was scheduled for April 4, 2019 and was adjourned to be reconvened on April 23, 2019. Both the Landlord and the Tenant were present for both teleconference hearings. This decision should be read in conjunction with the interim decision dated April 9, 2019.

Further details regarding service of the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence are included in the interim decision. Following the reconvened hearing, the Landlord submitted further documentary evidence to the Residential Tenancy Branch (RTB). As stated by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure*, evidence from the applicant must be received by the RTB and the respondent not less than 14 days prior to the hearing.

The parties were advised at the initial hearing that no further evidence would be excepted from either party. Therefore, the additional evidence submitted by the Landlord following the initial hearing will not be considered in this decision.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to monetary compensation?

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent and/or utilities?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The Landlord submitted a copy of the tenancy agreement that states a monthly rent of \$1,800.00, but also includes a note that each of the four tenants are responsible for paying \$450.00 per month. Through a previous decision dated February 20, 2018, a finding was made that there were four separate tenancies as each tenant/couple rented one bedroom in the home and shared the common areas of the home. The file numbers from this previous decision are included on the front page of this decision. As such, I accept that Tenant BK rented a room in the home for which he paid \$450.00 per month.

Through a previous decision dated May 22, 2018, the Landlord was granted a Monetary Order for unpaid rent and utilities and was provided authorization to retain the security deposit of \$225.00 towards compensation owed. The Landlord was also granted a 2-day Order of Possession through the May 22, 2018 decision. The file numbers for this decision are noted as the second file numbers included on the front page of this decision.

The parties agreed that the tenancy began on October 1, 2017 as stated in the tenancy agreement. The Landlord stated that the Tenant moved out at the end of May 2018, while the Tenant stated that he moved out at the end of April 2018.

The Landlord has applied for compensation totalling \$2,529.96 which includes claims for damages, cleaning, unpaid utilities and other costs incurred.

For utilities the Landlord has claimed a total of \$195.42 for unpaid BC Hydro bills. He stated that these are for the period of March 20, 2018 to May 31, 2018 and represent 25% of the bills due to the other 3 tenants being responsible for the remainder. The

tenancy agreement addendum states that each tenant is responsible for 25% of the following bills: metered water, non-metered irrigation water, sewer, garbage and recycling removal, electricity, propane, propane tank rental, telephone, cable and internet connections.

The Landlord provided a chart of previous utility bills as well as the ones currently being claimed to show which bills were awarded through a previous Monetary Order dated May 22, 2018. The Landlord submitted a BC Hydro bill dated May 22, 2018 for the period of March 20 to May 17, 2018 in the amount of \$297.55. The Landlord also submitted copies of the letters sent to the Tenant outlining the amount of the bill and how much was owed. For the period beginning May 18, 2018 the Landlord submitted a print-out of the daily use but did not submit the actual BC Hydro bill.

The Tenant stated that he would receive the letters from the Landlord regarding the amounts owed, but never received a copy of the actual bill showing the amount being charged. He stated that the Landlord had a duty to provide a copy of the bill and therefore the Tenant did not pay. The Tenant also argued that he moved out of the rental unit at the end of April 2018 and was therefore no longer residing there in May 2018 as claimed by the Landlord.

The Landlord stated that the Tenant was the last person continuing to reside on the residential property and therefore has claimed various percentages of the utility bills depending on how many tenants were living there at the time.

The Landlord also claimed a total of \$172.42 for propane costs including the May tank rental and the amount charged to top up the propane to what it was at the beginning of the tenancy. The Landlord submitted a propane bill from February 23, 2018 to show the approximate costs. He stated that he did not receive the actual bill for the period of time claimed until much later and did not include it as evidence. The Landlord also submitted a photo of the meter he stated shows the propane at 40% on May 31, 2018.

The Tenant again disputed the amounts claimed due to them being estimates from the Landlord and therefore the Tenant being unable to confirm the actual amount due.

The Landlord has also claimed reimbursement for bills from the city. The Landlord stated that he was billed every six months from the city and therefore did not receive the bill for May 2018 until after the tenancy had ended. The Landlord submitted the bills from 2016 and 2017 to show the average costs. The Landlord stated that the Tenant

was responsible for the full cost of this bill for May 2018 as he was the sole occupant of the home at that time.

The Tenant stated that he never received the actual bill for utilities from the city during the tenancy and therefore did not pay as was unable to confirm the amount due. The Tenant also stated that he was not the last occupant in the home.

The Landlord has claimed \$30.00 for snow removal and deck cleaning, \$80.87 for hot tub maintenance and \$300.00 for yard work. The tenancy agreement addendum states that the tenants are responsible for snow removal from the driveway, stairs and walkways and for the safety and cost to operate the hot tub, should they choose to use it.

The Tenant stated that he never used the hot tub and noted that the snow was removed, and yard maintenance done to their standards, not that of the Landlord. The Landlord responded by stating that the tenants were not keeping up with the lawn maintenance or snow removal, so he charged \$30.00 per hour to complete the work himself.

The Landlord further stated that the stairs were covered with snow and unsafe which is why he removed the snow himself. The Landlord submitted copies of the letters sent to the tenants regarding the number of hours completed and the amount owed as well as photos of the lawn, hot tub and property. The Tenant stated that they never asked the Landlord to complete this work and that the Landlord completed this work to his standards, not those of the occupants of the home.

The Landlord has claimed \$19.92 for replacement of a window blind in the living room, \$3.14 for 25% of a replacement blind on the kitchen door and \$4.53 for 1/3 of the cost of replacing fluorescent bulbs in the basement that were broken at the end of the tenancy. The Landlord submitted the receipt for the purchase of the new kitchen blind in the amount of \$12.57, as well as a photo of the damaged blind. A receipt for the cost of the living room blind in the amount of \$19.92 was submitted as well as a photo. A receipt in the amount of \$13.59 was submitted into evidence for the purchase of the new light bulbs for which the Landlord is claiming 1/3 from the Tenant. The Landlord stated that the blinds were a few months old at the start of the tenancy.

The Landlord stated that he arranged a time to meet the Tenant for a move-out inspection at the end of May 2018, but the Tenant did not attend. As such, the Landlord stated that he arranged another time with the Tenant in June 2018, for which the Tenant

did not attend either. The Landlord submitted the Condition Inspection Report which was signed by all four tenants at move-in on September 28, 2017 and by only the Landlord at move-out on June 5, 2018.

The Tenant stated that he was never contacted to complete a move-out inspection as he moved out in April 2018. The Tenant also stated that the blinds were fine when he moved out, so may have been damaged by another occupant of the home. The Tenant was unsure as to what light bulbs the Landlord was referencing.

The Landlord has also claimed \$72.56 for new refrigerator bins, and \$20.96 for new light bulbs for over the stove. The Landlord submitted photos of the fridge as well as a copy of the invoice for the replacement parts dated June 15, 2018 in the amount of \$72.56. The move-out inspection report notes damage to the fridge shelves/bins.

The Tenant stated that he never noticed any damage to the fridge and noted that the fridge was not new at the start of the tenancy. The Tenant also stated that he was unaware of any light bulbs being broken or burned out.

The Landlord has also claimed cleaning and repairs totalling \$719.00. This includes \$59.00 for the cost of renting a carpet steam cleaner and purchasing carpet shampoo, \$60.00 for two hours of carpet cleaning, \$300.00 for 10 hours of cleaning, and \$300.00 for removal of garbage and furniture left behind at the end of the tenancy. The Landlord submitted photos of the carpet in the living room, hallway and the Tenant's bedroom, as well as the receipt for the steam cleaner rental.

The Tenant testified that the furniture in the photos submitted by the Landlord did not belong to him, but two of the other tenants. The Tenant stated that the home and carpet was clean when he moved out other than normal wear and tear. The Tenant agreed that the photos submitted by the Landlord show damage to the carpet but re-stated his position that he was not the last occupant in the home and therefore is not solely responsible for the damage.

The Landlord is also seeking \$120.00 for repairs to the house which he noted included repairs to the kitchen counter and the fridge. He submitted photos of the built-in cutting board on the kitchen counter which he stated was damaged during the tenancy.

The Landlord has claimed \$497.50 which he stated is reimbursement for 4 nights of hotel costs that he paid for the Tenant. The Landlord submitted the invoice for the hotel from the period of November 11, 2017 to November 15, 2017. The Landlord provided

testimony that the tenants requested that he put them up in a hotel due to fabricated claims of mould in the home. He stated that there was no evidence of mould as determined by two consulting companies that the Landlord hired.

The Tenant stated that there was mould in the house, so all of the tenants wrote to the Landlord and requested he address the issues. The Tenant further testified that the Landlord advised them that he would put them up in a hotel while investigating the potential mould. The Tenant stated that the Landlord had previously claimed the hotel costs through a hearing in January or February 2018.

The Landlord also submitted into evidence the letter from the tenants dated November 8, 2017 in which they notify the Landlord regarding mould concerns, as well as text message communication between the parties regarding the discussion of the mould. The Landlord also submitted a report from a consulting engineer company dated December 8, 2017. The report concluded that there were no visible sources of mould that would impact the air quality, although recommended that steps are taken to improve air quality.

The Landlord has also claimed reimbursement for the cost of replacing missing items from the home. This includes a new thermometer in the amount of \$13.32 for which a receipt was submitted into evidence. As well, the Landlord is seeking compensation for other missing items which includes a trash can and mats from both inside and outside. The Landlord is claiming \$114.29 for replacement of the remainder of the missing items and submitted a receipt for this amount.

The Landlord stated that these items were provided to the tenants at the start of the tenancy and submitted photos of some of the items that were no longer present at the residential property at the end of the tenancy.

The Tenant provided testimony that he does not know what items the Landlord is referencing and is unsure why he is being blamed for any missing items when there were other people residing on the residential property. The Tenant stated that he did not remove any of the items from the property.

Analysis

Regarding the Landlord's claim for reimbursement of BC Hydro bills, I accept the tenancy agreement addendum submitted into evidence that outlines that each tenant was responsible for 25% of the utilities during the tenancy.

Although the parties were not in agreement as to the end of tenancy date, as I find evidence that the Landlord was awarded an Order of Possession dated May 22, 2018, I therefore find it likely that the Tenant continued to reside in the rental unit during May 2018 and moved out following service of the Order of Possession. I also accept that the previous utility bills awarded through a dispute resolution proceeding did not include the BC Hydro bill for the period of March 20, 2018 to May 17, 2018 given that the bill was issued on May 22, 2018 which was after the previous hearing.

Therefore, I award the Landlord a total of \$74.39 for 25% of the BC Hydro bill for the period of March 20 to May 17, 2018 as this bill was included in evidence. Although the Landlord also claimed compensation for a BC Hydro bill for the period beginning May 18, 2018, I do not find sufficient evidence regarding the amount owed as the bill was not submitted. Although a summary of charges was submitted, there was no information on this summary that would establish that the summary was the actual amount charged or that this was the summary for the address of the rental unit.

In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- 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.

Accordingly, while I find that the Landlord established that the Tenant was responsible for 25% of the utility bills, I am not satisfied that the Landlord has established the value of his loss regarding the second BC Hydro bill claimed.

Regarding the Landlord's claims for propane costs, I decline to award any amount as I find that the Landlord did not establish the value of his loss. Without the actual bills that would confirm the amount that the Landlord paid for propane, I am not satisfied that the Landlord has met the burden of proof to establish the propane costs. Accordingly, I decline to award any compensation for reimbursement of propane costs.

As for the utility bills from the city, again as the Landlord did not submit the actual bills I find that he did not meet the burden of proof to establish the value of the amount

claimed. I also note that although the Landlord claimed that the Tenant was the last person residing in the home and should therefore pay more than 25% for utilities, the tenancy agreement states that each tenant was responsible for 25% of the bills.

As this was stated in the tenancy agreement, I find that this amount should not change regardless of how many occupants were in the home at any given time. I decline to award any compensation for the utility bills from the city.

Regarding the claims for hot tub maintenance, I decline to award any compensation to the Landlord. I find that the tenancy agreement addendum states that the tenants are responsible for hot tub costs should they choose to use the hot tub and in the absence of any evidence to prove otherwise, I accept the testimony of the Tenant who stated that he chose not to use the hot tub. Therefore, I am not satisfied that the Tenant should be responsible for compensating the Landlord for costs of hot tub maintenance.

For the lawn care and snow removal, I find that the tenancy agreement addendum leaves this responsibility to the tenants. As this was not a residential property shared with the Landlord, I find that the tenants were solely responsible to remove snow and maintain the lawn. Should the Landlord have had concerns that this was not being done properly and was causing damage or risk of damage to the property, the Landlord could have spoken to the tenants about this and taken steps to address the concerns.

Instead, I find that the Landlord took over the snow removal and lawn maintenance without prior discussion or arrangements that the tenants would pay him for the work. Therefore, I find that the Tenant does not owe the Landlord for lawn maintenance or snow removal and decline to award any compensation for these claims.

As for the Landlord's claims for replacement of two blinds, replacement of fluorescent light bulbs, light bulbs over the stove and the replacement of the refrigerator shelves, as these items were in the common areas of the home and not in the bedroom rented by the Tenant, I am not satisfied that the Landlord has met the burden of proof to establish that the Tenant should be responsible for any portion of these costs. As I have insufficient evidence before me to establish that the Tenant was responsible for any portion of the damage, I decline to award any compensation for the blinds, light bulbs or refrigerator repairs.

Regarding the Landlord's claim for carpet steam cleaning, as stated in *Residential Tenancy Policy Guideline 1*, it is reasonable that a tenant clean the carpet of a rental unit after a year-long tenancy. Although this tenancy was less than a year, I still find it

reasonable that the Tenant would be responsible for steam cleaning the carpet in the bedroom that the Tenant rented, and I accept the photos submitted by the Landlord that show that the carpet was left dirty.

I also accept the Landlord's testimony that he cleaned the carpet in the Tenant's bedroom as well as in the living room and hallway which took 2 hours for a total of \$60.00 charged by the Landlord for labour. The Landlord has also claimed \$59.00 for the rental of the carpet steam cleaner.

I accept the photos submitted into evidence that show dirt and other stains on the Tenant's bedroom carpet and while I am not satisfied that the Tenant should be solely responsible for the cost of steam cleaning the shared carpet areas, I do find that the Tenant should be responsible for the cost of cleaning the carpet of the bedroom he rented and a portion of the shared areas. Therefore, I estimate this at 1.25 hours of labour for \$37.50. I also find that the steam cleaner would need to be rented regardless of how many carpets were cleaned and therefore award the Landlord \$59.00 as claimed for the rental.

Regarding the Landlord's claim for house cleaning in the amount of \$300.00 and labour for removal of garbage and furniture left behind in the amount of \$300.00, again I am not satisfied that the Tenant should be solely responsible. The Landlord did not submit sufficient evidence for me to determine that the Tenant was the last occupant of the home and if he was, that the home was left in reasonable condition by the other occupants when they moved out. This information would have established that the cleaning and junk removal was the Tenant's responsibility.

However, in the absence of this information, I do not find that the Landlord met the burden of proof for me to be satisfied that the Tenant left junk and furniture beyond or did not leave the residential property in a reasonably clean manner as required by Section 37 of the *Act*. However, I do accept that the Tenant was responsible for cleaning the bedroom and his share of the common areas and I have evidence before me of photos and a move-out inspection report that demonstrate that the property was not left reasonably clean as required by Section 37 of the *Act*. As such, I find that the Tenant is responsible for his share and I estimate 4 hours of cleaning at \$30.00 per hour for a total of \$120.00.

The Landlord has claimed compensation for repairs in the amount of \$120.00, which included repairs to the cutting board and fridge. However, I am not satisfied that the Landlord met the burden of proof to establish that the Tenant was responsible for the

damage to areas of the kitchen, given that the kitchen was a shared common area. As stated, I am also not satisfied that the Landlord has established that the Tenant was the last occupant of the home and that there were no repairs needed at the time the other tenants moved out. As such, I decline to award compensation to the Landlord for repairs as I am not satisfied that the repairs were needed due to the Tenant breaching the *Act*.

Regarding the Landlord's claim for reimbursement of hotel costs, I find that this claim had not been previously heard as stated by the Tenant and therefore the legal principle of *res judicata* does not apply. While the Landlord applied for monetary compensation in his application for the decision dated May 22, 2018, the arbitrator dismissed the monetary claims with leave to reapply and the hearing continued on the dispute over the 10 Day Notice only. Neither party submitted any evidence of previous hearings where the hotel costs were decided on regarding this Tenant.

However, upon consideration of the Landlord's claim for hotel costs, I find that the Landlord did not meet the burden of proof to establish that the Tenant should be responsible for this cost. I find that the Landlord did not meet the first test of the four-part test as I am not satisfied that the Tenant breached the *Act* due to concerns over the presence of mould in the rental unit.

I also do not find sufficient evidence before me to establish that the Landlord attended the rental unit to confirm the presence of mould prior to obtaining a hotel room for the Tenant, thus mitigating any potential loss as required. Instead, I find evidence that the Tenant brought up possible mould issues in the home and the Landlord paid for a hotel, without verifying the presence of mould or advising the Tenant that he would be responsible for the cost of the hotel room should mould not be found.

I find that the Tenant was within his rights under the *Act* to report mould concerns to the Landlord and do not find evidence that the *Act* was breached. I decline to award any compensation to the Landlord for the hotel costs.

I decline to award any compensation for replacement of missing items as I do not find that the Landlord provided sufficient evidence to establish that the items were provided as party of the tenancy and that the Tenant was responsible for the items missing at the end of the tenancy.

As there were multiple tenants on the property, I am not satisfied that the Tenant was responsible for the missing items and not one of the other occupants on the residential

property. In the absence of evidence that would confirm that they went missing due to the Tenant, I accept the Tenant's testimony that he does not know what happened to them.

Therefore, I find that the Landlord did not meet the burden of proof to establish that the Tenant is responsible for the replacement costs of the missing items and I decline to award compensation.

Pursuant to Section 72 of the *Act* I award the Landlord the recovery of the filing fee in the amount of \$100.00.

The Landlord is awarded a Monetary Order in the amount outlined below. The remainder of the Landlord's claims are dismissed, without leave to reapply.

Electricity bill	\$74.39
Carpet cleaning 1.25 hours	\$37.50
Steam cleaner rental	\$59.00
Cleaning 4 hours	\$120.00
Filing fee	\$100.00
Total owing to Landlord	\$390.89

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$390.89** as outlined above. The Landlord is provided with this 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: May 14, 2019

Residential Tenancy Branch