Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDL, MNRL-S, FFL

Introduction

In this case, the landlord sought compensation for various damages and repairs to the rental unit, for unpaid utilities, and for recovery of the filing fee, pursuant to sections 67 and 72, respectively, of the *Residential Tenancy Act* (the "Act").

The landlord applied for dispute resolution on September 3, 2019 and a dispute resolution hearing was held on December 30, 2019. The landlord and tenant attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses, of which there were two for the landlord. While the parties (the tenant in particular) raised issues with the service of documents and evidence, I was able to confirm that both parties (1) had received copies of the other side's evidence intended to be relied upon, and (2) had sufficient opportunity to review the evidence in advance of the hearing.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of this application. It is important to note at the outset that the landlord submitted hundreds of digital files, consisting primarily of photographs, that were neither correctly or descriptively named, nor was there any kind of digital evidence index or table of contents.

While I have accepted the overall submissions of the landlord's evidence, unless the landlord specifically referred to a named document during her testimony, I may not consider it. (As explained to the landlord during the hearing, while I am empathetic to the landlord's lack of computer literacy, it is simply not administratively feasible for a decision maker to sift through hundreds of unlabeled documents to find something referred to by a party.)

Finally, it should be noted that I granted the applicant landlord a week (by January 6, 2020) in which to submit a Monetary Worksheet for the purposes of this application. She submitted the requested worksheet as asked.

Issues

1. Is the landlord entitled to compensation for various repairs and damages?
2. Is the landlord entitled to compensation for unpaid utilities?
3. Is the landlord entitled to recovery of the filing fee?
4. Is the landlord entitled to retain any or all of the tenant's security and pet damage deposit in full or partial satisfaction of any award?

Background and Evidence

In this dispute, the landlord seeks compensation from her former tenant for costs related to a damage carpet, water taps/faucet, scratches on the walls, painting, and cleaning. The total claim for these items amounts to $7,281.99. The landlord also seeks unpaid utilities (for BC Hydro) in the amount of $606.11. And, as noted, recovery of the filing fee in the amount of $100.00. In total, the landlord seeks $8,390.89 in compensation.

For clarity, I have reproduced the Monetary Order Worksheet's itemization below:

Receipt/Estimate From	For	Amount
Hope Depot carpet estimate	carpet, underlay, and installation	$6,505.49
London Drugs	pictures, USB, cd's, printing	149.51
Home Depot / Ace Hardware receipts	Paint supplies and taps	437.43
Dollarama / Dollar store receipts	Paint supplies, cleaning supplies, light bulbs	39.17
Okaganan carpet cleaning	Carpet cleaning	231.00
[personal name redacted]	Housecleaning	300.00
Canada Post	Registered mail	11.97
Post Net	Photo copies	10.21
Service BC	Service BC [filing] fee	100.00
RTB-46	Utilities owing	606.11
	Total Monetary Order Claim:	$8,390.89

By way of brief background, the tenancy started on December 1, 2015 and ended on September 30, 2017. Monthly rent was $950.00 plus utilities, which were calculated at 50% of the electrical bill. The tenant paid a security deposit of $475.00 and a pet damage deposit of $200.00. A copy of two written tenancy agreements were submitted into evidence by the landlord. A Condition Inspection Report (a copy of which was submitted into evidence and which I will consider) was completed by both parties at the start of the tenancy.

The alleged damages and issues to the rental unit consisted of the kitchen taps' finish being removed or otherwise damaged. The landlord referred to a photograph of the taps before and after the tenancy; however, I could not locate any photograph (through a review of the photographs that were properly labelled) depicting the before-and-after state of the taps. Other damages included a hold and tears and cigarette burns in the carpet. There were significant scratches in the walls and carpet caused by the tenant's cat. In addition, there were urine stains caused by the cat and/or the tenant's chinchilla. There was, according to the landlord, "feces in all the rooms," which resulted in cleaning costs and a needed replacement of the carpet (which has not yet occurred). The rental unit required or requires painting. New carpets are needed, though the carpets were installed in 2012. The landlord submitted various receipts for the damages and costs. Regarding the animals, the landlord testified that while cats were allowed under the tenancy agreement, the chinchilla was not.

Finally, regarding the unpaid utility bill, the landlord testified that the tenant moved out but had an unpaid utility debt of $606.11. While I could not find a copy of the BC Hydro bill, the landlord noted that it had been submitted.

On September 7, 2017, the tenant "left a note" to the effect that she was ending the tenancy, and then "disappeared." There was, it appears, some attempt by the landlord to meet with the tenant to discuss the contents of the note and the tenancy. However, no such discussion occurred. (It is worth noting that there is a not insignificant level of animosity between the parties; while the parties conducted themselves appropriately throughout the hearing, it was clear that tempers were simmering. Other issues involving social media bullying, and so forth, were briefly referenced by the parties.)

The tenant moved out on or about September 28, 2017. The landlord completed a Condition Inspection Report in the absence of the tenant, as the tenant wanted no part in the process and did not talk to the landlord about the inspection.

New tenants moved into the rental unit on December 15, 2017 and vacated in April or May of 2018. And then another set of new tenants moved into the rental unit in June 2018 and have liver there ever since.

The landlord's witness (K.J.) testified that he saw the condition of the rental unit at the start of the tenancy and explained that the kitchen was fine and there were no holes or tears in anything. He was "familiar with" with the rental unit and its condition. He testified that at the end of the tenancy there was "the most strangest burn in the carpet," such that a super hot pan or pot might cause. It had burned a "perfectly circular" hole into and through the carpet and into the underlay. (The landlord's witness T.K. did not provide any testimony during the hearing.)

The tenant testified that, in regard to the utilities, there was "nothing about utilities when I moved in" and that utilities only came up "down the road." She disputed the landlord's claim that she owed for the utilities. While she had eventually started paying the utilities "all along," she states that she did not have to under the tenancy agreement.

As for the cleaning of the rental unit, the tenant testified that her mother did much of the cleaning during the tenant's moving out. She also stated that, due to complications with the keys and access codes, she was "not let back in" to the rental unit. The tenant testified that "the carpets [were] filthy when I moved in. They were not new." The rental unit itself was "filthy when I moved in."

Regarding the Condition Inspection Report, the tenant argued that portions of the report are "erased and altered" and that the information in the report is not an accurate reflection of the condition of the rental unit. She added that she did not want anything more to do with the landlord and thus chose not to participate in any move out inspection. She admitted that at no point did she provide the landlord with her forwarding address, and that the only time the landlord eventually obtained her address was after the landlord filed this application.

The tenant submitted that she never caused the damage alleged. As for the scratches on the wall and carpet, she argued that the cat could not have caused such scratches because it only had 3 feet (or paws). The pet chinchilla did not pee anywhere except in its cage, and thus could not have urinated on the carpets as claimed by the landlord. She reiterated that her "mom cleaned the place before I left." Or, as she clarified, the rental unit was "cleanish" minus the one stain. The stain was caused by the chinchilla near or in the bedroom.

The tenant ended her testimony by reiterating that she never caused any of the damage alleged, that there were burn marks before she moved in, that the pictures submitted by the landlord are “all changed” and that she never received her damage deposit back.

In her final submission the landlord testified that tenant never came back to participate in the move out inspection. She conceded that there were some stains, but that the rental unit was otherwise neat and tidy (which is how she described the bachelor who resided in the rental unit before the tenant moved in). Otherwise, as to the tenant’s submissions, the landlord remarked that she was “hearing a lot of nonsense.”

In her final submission the tenant argued that 150 photographs submitted by the landlord are not relevant. And, that the photographs were taken after she moved out, in some cases almost two years later.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim, which in this case is the landlord.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with the Act and the tenancy agreement, and that they should be compensated for this non-compliance.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities *all four* of the following criteria to be awarded compensation:

1. that the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement;
2. that the loss or damage resulted directly or indirectly from non-compliance;
3. that the applicant has proven the amount or value of the damage or loss; and,
4. that the applicant did whatever was reasonable to minimize their damage or loss.

Claim for Unpaid Utilities

First, the utilities. The landlord submits that the tenant owes her money for an unpaid BC Hydro debt that is a term of the tenancy agreement. The tenant disputes this and says that while she was paying utilities throughout part of the tenancy, it was not part of the tenancy agreement. The onus is, of course, on the landlord to prove that the tenant was required under the written tenancy agreement to pay for the utility.

A copy of the first written tenancy agreement submitted into evidence and which was signed by the parties clearly indicates, on page 2 of the agreement, that there is "Shared utilities of 50%". A second tenancy agreement (for the period of July 1, 2016 onward) does not have the box "Electricity" ticked on page 2: thus, electricity was not included in the rent. The landlord, however, continued to only seek a contribution of 50% for the electricity from the tenant.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has proven that the tenant was required as per a written tenancy agreement to pay for utilities, which is BC Hydro. Additional documentary evidence, in the form of an email from the landlord to the tenant, confirms that the outstanding balance is $606.11.

For this reason, the landlord has met the onus of proving the first of the above-noted criteria (that is, that the tenant failed to comply with the tenancy agreement) and her claim for unpaid utilities succeeds. The amount owing was established, and the landlord would not have suffered this loss but for the tenant's refusal to pay what is owed.

Finally, there is little else the landlord could have done to minimize her loss except to ask for the amount owed. In summary, I award the landlord $606.11 for unpaid utilities.

Claim for Painting, Cleaning, Light Bulbs, and House Cleaning

In regard to the damages and cleaning aspect of the claim, we must first take a look at section 37(2) of the Act. This section states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

When a tenant does not leave a rental unit reasonably and undamaged then a landlord may have a case for damages (that is, money). However, the reasonable cleanliness and undamaged nature of the rental unit must be in relation to the condition of the rental unit at the start of the tenancy. For that, we must now turn to the Condition Inspection Report (the "Report").

The rental unit as described in the Report on December 1, 2015, was overall in "good condition." The rental unit was described on September 28, 2017 as extensively and variously described as "damaged," "dirty," "scratched," "poor," and "missing" (meaning some light bulbs). In the absence of photographs, the Report depicts that the rental unit was left anything but as reasonably clean and undamaged by the tenant.

How much weight should I place on the Report? Section 21 of the *Residential Tenancy Regulation* provides me with a clear instruction:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

A "preponderance of evidence" means superior evidence that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The tenant has not, I find, provided a preponderance of evidence to the contrary that the rental unit was as described in the Report. While the tenant submitted a few PDF documents that included photographs of various items and areas of the rental, none are sufficient, I find, to actually dispel the description of the rental unit as denoted in the Report. There is no all-encompassing set of photographs submitted by the tenant to counter the various damages described in the Report.

The tenant could have chosen to attend to the move-out inspection and dispute the Report's findings but did not do so. The tenant could have called her mother as a witness – who purportedly cleaned the rental unit when the tenant moved out – but did not do so. In short, I am left with the Report as evidence of the state of repair and condition of the rental unit on September 28 or September 29, 2017. The tenant's allegations that the Report has had sections erased and altered is, I find, not credible. There is no evidence that the Report has been doctored or fraudulently altered in any

way, and as the tenant chose not to attend the final inspection, I find it a less-than-convincing argument in any event.

Based on the testimony of the landlord and the supporting testimony of the landlord's witness, coupled with the evidentiary weight of the Report, I find that the tenant breached section 37(2) of the Act. And, but for the tenant's breach of the Act the landlord would not have suffered the loss and damage as claimed.

Having found that the tenant is liable for damages resulting, the third step is determining the value or loss suffered by the landlord. The landlord submitted receipts for various repairs and damages. I find that all receipts submitted are reasonable costs incurred.

The final step is determining whether the landlord did whatever was reasonable to minimize her damage or loss. An important step in minimizing damages and loss is obtaining various quotes and pricing out options. It is also vital that a landlord take care of any issues or problems within a reasonable time after a tenant leaves, and before new tenants move in. This was not done here, at least for some of the costs claimed.

For example, the replacement faucet was purchased (for $192.48) at Home Depot on August 8, 2019, almost two years after the tenant vacated. A carpet cleaning invoice in the amount of $105.00 was submitted into evidence; the invoice is dated March 6, 2018, a full five months after the tenancy ended. (There was, of course, an invoice dated October 30, 2017, a bit closer to the tenant's departure.) For the remainder of the receipts, however, the landlord appears to have taken care of the issues within a month or two of the tenants leaving, but before the next tenants moved in on December 15, 2017.

The landlord's claim for house cleaning in the amount of $300.00, is, I find, a reasonable amount based on the condition of the rental unit.

Given the combination of the landlord's failure to provide evidence of alternative options in terms of pricing, I must find that the landlord did not do whatever was reasonable to minimize her loss, but only in relation to the few items noted above. I must also omit any claim for such things as the faucet which was purchased long, long after the tenancy ended. For this reason I award the landlord's claim for paint supplies, cleaning supplies, light bulbs, but subtract from this amount the cost of the faucet and the carpet cleaning invoice, for a total of $710.12 ($1,007.60 - $192.48 - $105.00 = $710.12).

Claim for Carpet

The landlord seeks $6,505.49 to replace the rental unit's carpet and underlay, and for installation costs.

The Report refers to the living room floor/carpet as "Damaged" and described as "scratched urine stains [and] rodent feces everywhere." The entry floor/carpet is described as "muddy, dirty" and in "poor" condition. The dining room floor/carpet is described as "urine[,] feces[,] hole in carpet, tears in carpet, dirty." The stairwell and hall treads and landing are noted as "dirty." The Main bathroom floor/carpet: "dirty"; the master bedroom floor/carpet was "dirty, urine, feces" and "rips in carpet". In summary, the condition of the carpets in the rental unit were in such poor condition that the landlord needed to have them replaced.

Based on the evidence, of which I only place any weight on the Report, I conclude that the tenant breached section 37 of the Act: she did not leave the rental unit's carpet(s) reasonably clean and undamaged. Urine and wine stains, and burns, are not, I conclude, reasonable wear and tear. But for the tenant's breach of the Act, the landlord would not have suffered a monetary loss to the carpet, which she claims is $6,505.49.

But the landlord is not entitled to this full amount due to the depreciating value that must be considered and factored into any amount claimed. The reason I must consider this is, a reasonable landlord will end up having to replace a rental unit's carpets every 10 (or so) years, and thus, the cost for replacing the carpet as a regular part of being a landlord is simply a cost of doing business.

The carpets were, according to the landlord's testimony, installed new in 2012. The tenant moved in on December 1, 2015 and moved out on September 30, 2017. There is a period of approximately 5 years between when the carpets were installed and when the tenant moved out.

For carpets, the useful life is, pursuant to *Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements*, 10 years. Thus, the carpet would have effectively depreciated in value by at least 50% by the end of the tenancy in any event.

In terms of mitigation, if the landlord had made a claim within a month or two of the tenancy ending (as opposed to leaving it until almost two years later), then I would be able to consider granting her claim with a 50% depreciated value. However, I find that

the landlord, in having new tenants move in, and then tenants after that, failed to take any reasonable steps to mitigate the loss. The landlord may have incurred damage, but new tenants have since moved in without any apparent loss in rental income (I note that the landlord did not speak to this, nor did I canvass her on this point). Indeed, two sets of tenants have now apparently lived in the rental unit, with the old carpet still there.

Having found that, not only had the carpet naturally depreciated in value by 50%, the landlord failed to take reasonable steps in mitigating her loss in relation to the carpet. For this reason, I must respectfully dismiss her claim for the damaged carpets.

(However, the landlord's attempt to have the carpets cleaned, and for which I have awarded compensation, was a reasonable step, and which is compensable.)

Claim for Service BC (Residential Tenancy Branch) Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was, as to the majority of her application successful, I grant her claim for reimbursement of the filing fee in the amount of $100.00.

Landlord's Retention of Security and Pet Damage Deposits

Regarding the application of the security and pet damage deposits to the above-noted awards, I briefly reference section 39 of the Act, which states:

> Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,
>
> (a) the landlord may keep the security deposit or the pet damage deposit, or both, and
> (b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

In this case, the tenant testified that she did not provide the landlord with her forwarding address in writing after the tenancy ended. Section 38(1) of the Act requires a landlord to return a tenant's security and pet damage deposit within 15 days after a tenancy ends and when *the landlord receives the tenant's forwarding address in writing.*

The tenant testified that the landlord never returned her security and pet damage deposits, but, at the same time, she admitted to never actually giving the landlord an address to which the security and pet damage deposit could be sent.

I find that, based on the evidence of the parties, the landlord is entitled to keep the entire amount of the security and pet damage deposits ($675.00 in total), which will be applied toward the amount awarded, pursuant to section 39 of the Act.

Claim for Litigation Related Costs

The landlord applied for compensation related to what I will call litigation-related costs. These include costs for pictures, USB preparation, CDs, printing ($149.51 claimed), photocopies ($10.21), and registered mail ($11.97). Section 67 of the Act only permits me to order costs related directly to the tenant's failure to comply with the Act, the regulations or the tenancy agreement. And, section 72 permits me to award filing fee costs.

However, the Act does not grant me authority to award costs related to the preparation of dispute resolution proceedings, such as those claimed above. As such, I must decline to consider, and cannot award, the above-noted litigation-related costs.

Summary of Monetary Award

I award the landlord a total monetary award of $1,947.23. From this, a total monetary order of $1,272.23 for the landlord is granted and calculated as follows:

CLAIM (GRANTED)	AMOUNT AWARDED
Unpaid utilities	$606.11
Paint supplies, cleaning supplies, etc.	710.12
Carpet cleaning	231.00
House cleaning	300.00
Filing fee	$100.00
LESS security and pet damage deposits	($675.00)
Total:	$1,272.23

Conclusion

I hereby grant the landlord a monetary order of $1,272.23, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia, Small Claims Division.

All claims not granted or awarded herein are dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 9, 2020

Residential Tenancy Branch