



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, OPC, OPR, CNC, CNR, LRE, OLC

Introduction

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a One Month Notice to End Tenancy for Cause, for an Order setting conditions on the Landlord's right to enter the rental unit, and for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement.

The Tenants filed a second Application for Dispute Resolution, in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order setting conditions on the Landlord's right to enter the rental unit, and for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement.

At the outset of the hearing the male Tenant stated that the Tenants would like to withdraw all issues in dispute in both of their Applications for Dispute Resolution, as the rental unit has been vacated. I therefore consider both of the Tenants' Applications for Dispute Resolution to be withdrawn.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for unpaid rent, for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and for an Order of Possession. At the outset of the hearing the Landlord withdrew her application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that on January 21, 2021 the Dispute Resolution Package was sent to each Tenant, via registered mail. The Tenants acknowledged receipt of the Landlord's Application for Dispute Resolution.

In January of 2021 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, January 21, 2021. The male Tenant stated that the Tenants received approximately 30 pages of evidence with the Landlord's Application for Dispute Resolution and that evidence was accepted as evidence for these proceedings.

On March 17, 2021 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via email, March 17, 2021. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

In January of 2021 the Tenants submitted evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was served to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On March 21, 2021 and March 28, 2021, the Tenants submitted additional evidence to the Residential Tenancy Branch. The male Tenant stated that this evidence was not served to the Landlord as the deadline for serving evidence to the other party had passed. As the evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The parties were advised that each time we spoke about a piece of documentary evidence, I would confirm that the other party had received that document. The other party confirmed receipt of all documents referenced in this decision.

The participants were provided with the opportunity to present relevant oral evidence, to ask relevant questions and to make relevant submissions. Each participant affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

Section 59 (2)(b) of the *Act* requires an applicant to provide “full particulars” of the dispute.

The Landlord’s Application for Dispute Resolution clearly informs the Tenants that she is seeking compensation for unpaid rent, in the amount of \$7,800.00. I therefore find it reasonable to consider this claim at these proceedings.

The Landlord’s Application for Dispute Resolution also clearly informs the Tenants that she is seeking compensation for unpaid hydro cost of \$984.47 and oil costs of \$750.00. I therefore find it reasonable to consider these claims at these proceedings.

The Landlord’s Application for Dispute Resolution also clearly informs the Tenants that she is seeking compensation of \$500.00 for cleaning and I therefore find it reasonable to consider this claim at these proceedings.

The Landlord’s Application for Dispute Resolution also clearly informs the Tenants that she is seeking compensation of \$1,000.00 for repairing “estimated damages”.

Typically, applicants provide a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. This list is typically provided on a Monetary Order Worksheet. In these circumstances, the Landlord did not submit a Monetary Order Worksheet to support the claim for \$1,000.00 nor did she submit a list of alleged damages with associated claim amounts.

The Landlord submitted receipts/invoices that indicate she is claiming compensation of \$191.32 for re-keying locks, \$233.99 for painting, and \$445.00 for repairing a screen door. The male Tenant stated that the Tenants understood the Landlord was claiming compensation in these amounts. Although the Landlord did not submit a detailed list of these claims, I find that the Tenants understood, from the receipts/invoices submitted, that the Landlord was seeking compensation in these amounts. I therefore find it reasonable to consider these claims at these proceedings.

The Landlord submitted photographs of other alleged damages to the rental unit, such as damaged walls and damaged flooring. The Landlord did not submit a list explaining the amounts she is claiming in compensation for any other alleged damage, nor did she submit receipts/invoices that would indicate the amount of compensation claimed. As the Landlord did not provide the Tenants with clear details of her claim for

compensation for any other alleged damage, I decline to consider a claim for any other damage to the rental unit. I find that considering any other claims would be unfair to the Tenants, as the absence of particulars makes it difficult, if not impossible, for the Tenants to respond to the claims.

The Landlord retains the right to file another Application for Dispute Resolution in which she claims compensation for other damages to the rental unit.

Preliminary Matter #2

This hearing was scheduled to commence at 9:30 a.m. and to conclude at 10:30 a.m. By the time this hearing was concluded at 10:40 a.m., we had discussed the Landlord's monetary claims for rent, hydro, oil, painting, re-keying the locks, and cleaning.

The Landlord advised that she was claiming compensation for additional damages to the rental unit. As we did not have time to consider any additional damages, the parties were advised that the hearing would be adjourned and reconvened at a later time.

After the conclusion of the hearing, I determined that no additional claims for damages should be considered at these proceedings, for reasons explained in preliminary matter #1. As I have concluded that no additional damages should be considered at these proceedings, I find it is not necessary to reconvene these proceedings.

As previously stated, the Landlord retains the right to file another Application for Dispute Resolution to claim compensation for damages not considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation for unpaid rent/utilities, and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that this tenancy began on August 01, 2020. The male Tenant stated that it began on June 21, 2020.

The Landlord and the Tenants agree that:

- the Tenants agreed to pay monthly rent of \$1,950.00 by the first day of each month;
- the Tenants paid a security deposit of \$975.00;

- the Tenants paid a pet damage deposit of \$975.00;
- the Tenants did not provide the Landlord with a forwarding address;
- the rental unit was vacated on July 31, 2021;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenants on January 02, 2021 which declared that the Tenants must vacate the rental unit by January 12, 2021;
- a One Month Notice to End Tenancy for Cause was also served to the Tenants which declared that they must vacate the rental unit by January 31, 2021;
- the Tenants disputed both of the aforementioned notices to end tenancy;
- the Tenants vacated the rental unit on January 31, 2021;
- the Tenants did not give written notice of their intent to vacate the unit on January 31, 2021; and
- the Tenants paid no rent for January of 2021.

The Landlord initially claimed compensation for unpaid rent, in the amount of \$7,800.00.

The Landlord stated that:

- she initially claimed this amount because she did not know when the rental unit would be vacated;
- she is now seeking compensation of \$1,950.00 in unpaid rent for January of 2021;
- she was not able to rent the unit for February 01, 2021, as she did not know when the Tenants would vacate the rental unit;
- on January 02, 2021 the male Tenant told her that he may be leaving at the end of January;
- she was able to re-rent the unit for February 15, 2021; and
- she is claiming \$975.00 in compensation for the period between February 01, 2021 and February 14, 2021.

The male Tenant stated that on January 01, 2021 he told the Landlord that he would be moving on January 31, 2021.

The Landlord applied for unpaid hydro charges, in the amount of \$984.47. At the hearing she reduced the amount of her claim to \$565.33.

The Landlord and the Tenants agree that the Tenants were required to pay 75% of the hydro costs incurred at the rental unit. The Landlord submitted two hydro bills, which the Tenants acknowledged receiving as evidence. The Landlord and the Tenants agree that the Tenants owe a portion of these two bills, in the amount of \$565.33.

The Landlord applied for unpaid oil charges, in the amount of \$565.37. The Landlord and the Tenants agree that the Tenants were required to pay 75% of the oil used during the tenancy. The Landlord submitted an oil bill, which the Tenants acknowledged

receiving as evidence. The Landlord and the Tenants agree that the Tenants owe a portion of this bill, in the amount of \$565.37.

The Landlord is seeking compensation, in the amount of \$506.94, for cleaning the rental unit. The Landlord submitted an invoice for carpet cleaning, in the amount of \$286.44, and an invoice for general cleaning, in the amount of \$220.50. The Tenants acknowledged receiving these invoices as evidence.

The male Tenant stated that the Tenants cleaned the carpets with a rented carpet cleaner on January 30, 2021. He stated that it was raining when they were moving out of the unit on January 31, 2021 and they tracked some mud onto the carpet on the stairs and landing. The Landlord stated that the Tenants also tracked mud onto other areas of the carpet and, as such, the carpets needed cleaning at the end of the tenancy.

The Landlord submitted photographs of the unit, which she stated reflect the cleanliness of the rental unit at the end of the tenancy. The male Tenant stated that he has viewed those photographs and he agrees that they fairly represent the cleanliness of the unit at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$261.45, for duct cleaning. The Landlord stated that the duct cleaning was necessary because the Tenants smoked cannabis in the rental unit. The Landlord submitted an invoice for duct, in the amount of \$261.45, The Tenants acknowledged receiving this invoice as evidence.

In support of the claim for cleaning the ducts, the Landlord stated that:

- she could smell cannabis smoke coming into her home from the vents in the rental unit;
- she mentioned the smell to the Tenants on several occasions in text messages she submitted as evidence;
- she is familiar with the smell of cannabis smoke as opposed to the smell of cannabis prior to it being ignited;
- in November the male Tenant apologized profusely for the smell of smoke.

In response to the claim for duct cleaning, the male Tenant stated that:

- the Tenants never smoked cannabis in the unit;
- he suspects the Landlord was smelling cannabis from the female Tenants jacket, as she smokes cannabis off of the property;
- he has never apologized for smoking cannabis on the property; and

- if he did apologize for smoking cannabis on the property, it was “not an admission” that cannabis was being smoked on the property.

In regard to the claim for duct cleaning, the Witness for the Landlord stated that:

- she is thirteen years old;
- she is the Landlord’s daughter;
- she lives below the rental unit;
- she has smelled cannabis smoke coming into her room from the rental unit;
- she first smelled the smoke in October of 2020;
- she last smelled the smoke on Christmas day;
- she is familiar with the smell of cannabis smoke as opposed to the smell of cannabis prior to it being ignited; and
- she was in the unit shortly after the tenancy began and she smelled cannabis smoke.

The Landlord is seeking compensation, in the amount of \$191.32, for re-keying the locks. The Landlord stated that she needed to re-key the locks because the Tenants did not leave keys to the rental unit.

The male Tenant stated that they left the keys to the unit on the kitchen counter.

The Landlord stated that she mentions the missing keys in an email she sent to the female Tenant on February 01, 2021.

The Landlord is seeking compensation, in the amount of \$233.99, for painting a bedroom. The Landlord submitted painting receipts to support the claim. The Tenants acknowledged receiving this evidence.

In support of the claim for painting the Landlord stated that:

- when this tenancy began the room was a “pinky-peach” color with a flowered border near the ceiling;
- the Tenants painted the room a “pepto bismal” pink; and
- the Tenants did not have permission to change the paint color.

In response to the painting claim the male Tenant stated that they did not paint the bedroom during the tenancy.

In regard to the painting claim the Witness for the Landlord stated that:

- when this tenancy began the room was a “baby pink” color with a yellow flowered border near the ceiling; and
- the Tenants painted the room a brighter pink color.

The Landlord is seeking compensation, in the amount of \$445.00, for replacing the screen door. The Landlord submitted an invoice for replacing the door, photographs of the subject door, and electronic communications related to the door. The Tenants acknowledged receiving this evidence.

In support of the claim for the damaged door the Landlord stated that:

- on November 30, 2020 she noticed the screen door was “locked open”;
- on November 30, 2020 a text to the Tenants asking them to close the door so it would not be damaged;
- the door was damaged by the wind and now does not close properly;
- there are holes in the screen of the door, which were not there at the start of the tenancy; and
- the door was new in 2017.

In response to the claim for the damaged door the male Tenant stated that:

- on November 30, 2020 the screen door was being held open by the “hydraulic press”;
- on November 30, 2020 the Landlord sent them a text asking them to close the door;
- they closed the door;
- the door was not damaged by the wind; and
- there were some holes in the screen door at the end of the tenancy, which were present at the start of the tenancy.

Analysis

On the basis of the undisputed evidence, I find that the parties entered into a tenancy agreement, for which the Tenants were required to pay rent of \$1,950.00 by the first day of each month.

On the basis of the undisputed evidence, I find that the Tenants have not paid the rent that was due on January 01, 2021. As the Tenants were required to pay rent when it was due on January 01, 2021, pursuant to section 26 of the *Act*, I find that they must pay \$1,950.00 in rent for January of 2021.

On the basis of the undisputed evidence, I find that the Tenants were served with a One Month Notice to End Tenancy for Cause, which declared that they must vacate the rental unit by January 31, 2021, and a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which declared that they must vacate the rental unit by January 12, 2021.

On the basis of the undisputed evidence, I find that the Tenants disputed both of the aforementioned notices to end tenancy. As the Tenants disputed the notices to end tenancy, I find that the Landlord could not reasonably have expected the rental unit to be vacated by January 31, 2021. As the Landlord could not reasonably have expected the rental unit to be vacated by January 31, 2021, I find she was unable to find new tenants for February 01, 2021, although she was able to re-rent the unit for February 15, 2021.

I find that the Tenants must compensate the Landlord for the lost revenue she experienced between February 01, 2021 and February, in the amount of \$975.00, as she would not have lost that revenue if the Tenants had not disputed the notices to end tenancy and then subsequently vacated the unit on January 31, 2021. By disputing the notices to end tenancy the Tenants effectively informed the Landlord that they will not be vacating the unit on the basis of the notices to end tenancy. As such, it was reasonable for the Landlord to presume that the Tenants will remain in the unit until the matter is determined at a dispute resolution proceeding.

In considering the claim for lost revenue for February of 2021, I have placed no weight on the male Tenant's testimony that on January 01, 2021 he told the Landlord they would be vacating by January 31, 2021. Even if that were true, that communication is in direct conflict with the Application for Dispute Resolution the Tenants filed on January 06, 2021, in which they disputed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

As the Landlord and the Tenants agree that the Tenants owe \$565.33 in hydro charges and \$565.37 for oil, I find that the Tenants must pay these amounts to the Landlord.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates 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, and 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.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave the carpets clear of mud at the end of the tenancy. Although I accept the Tenants testimony that they cleaned the carpets on January 30, 2021, I also accept their tenancy that they tracked mud onto the stairs and landing when they were moving on January 31, 2021. Given that they acknowledge tracking mud onto the stairway, I find it highly probable that they also tracked mud into other areas of the unit, as the Landlord alleges.

As the carpets needed additional cleaning at the end of the tenancy, I find that the Tenants must pay the cost of the carpet cleaning, which is \$286.44.

On the basis of the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Tenants must pay the cost of the cleaning, which is \$220.50.

Section 37(2) of the *Act* only requires that a tenant leave a rental unit reasonably clean. Even if I concluded that cannabis was smoked within the rental unit during the tenancy, I cannot conclude that it was necessary to have the ducts cleaned to render the unit reasonably clean. In reaching this conclusion, I was influenced, in part, by the absence of independent evidence to establish that smoking in a rental unit for a period of less than 7 months, would necessitate the need to clean the ducting. In reaching this conclusion, I was further influenced by Residential Tenancy Branch Policy Guideline #1 which reads, in part, that the landlord is responsible for “cleaning heating ducts and ceiling vents as necessary”.

In considering the claim for duct cleaning I have placed no weight on section 14 of the addendum to the tenancy agreement. Although that section outlines various areas in the unit that the Tenants must clean if the Tenants smoke in the unit, it does not specifically declare that the Tenants must have the ducts cleaned if they smoke in the unit.

As the Landlord has failed to establish that the Tenants needed to clean the ducts in order to comply with section 37(2) of the *Act*, I dismiss the Landlord's application for cleaning the ducts.

I find that the Landlord submitted insufficient evidence to establish that the Tenants did not return the keys to the rental unit at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Landlord's testimony that the keys were not returned or to refute the Tenants' submission that they were left on the kitchen counter.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

In adjudicating the claim for re-keying the locks, I have placed no weight on the Landlord's testimony that she mentions the missing keys in an email she sent to the female Tenant on February 01, 2021. I have placed no weight on that testimony as I was unable to find a copy of this the email in the Landlord's evidence submission.

As the Landlord has failed to meet the burden of proving the keys were not returned at the end of the tenancy, I dismiss the Landlord's claim for compensation for re-keying the unit.

I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants painted a bedroom in the rental unit and they did not return it to its original color at the end of the tenancy.

I favour the testimony of the Landlord, who stated that the Tenants painted a bedroom a "pepto bismal pink" during the tenancy over the testimony of the male Tenant, who stated that this bedroom was not painted during the tenancy. I favoured the testimony of the Landlord because it was corroborated by the testimony of the Witness for the Landlord.

Although I recognize that the Witness for the Landlord is not an unbiased party, I found that her testimony was consistent with the testimony of the Landlord but with enough variances that caused me to conclude that it was not "coached".

As the Tenants did not re-paint the bedroom at the end of the tenancy, I find that the Landlord is entitled to compensation for painting the bedroom at the end of the tenancy, in the amount of \$233.99.

I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the screen door at the end of the tenancy.

I find that the Landlord submitted insufficient evidence to establish that the screen door did not close properly at the end of the tenancy. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Landlord's testimony that it did not close properly or to refute the male Tenant's testimony that it closed properly.

On the basis of the undisputed evidence, I find that the screen door had holes in the screen at the end of the tenancy.

I favour the testimony of the Landlord, who stated that the screen door was in good condition at the start of the tenancy, over the testimony of the male Tenant who stated that there were holes in the screen door at the start of the tenancy. I favor the Landlord's testimony in this regard as it is corroborated by the condition inspection report that was signed by the Tenants at the start of the tenancy, which declares that the exterior doors were in good condition.

As I have concluded that the screen door was in good condition at the start of the tenancy, I find that the Tenants were obligated to repair the holes in the screen door that were present at the end of the tenancy. As such, I grant the Landlord's claim of \$445.00 for repairing the door.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount **of** \$5,341.63, which includes \$1,950.00 in rent; \$975.00 in lost revenue; \$565.33 in hydro charges; \$565.37 in oil costs; \$286.44 for carpet cleaning; \$220.50 for cleaning; \$233.99 for painting; \$445.00 for repairing the screen door; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I

authorize the Landlord to retain the Tenants' security deposit of \$1,950.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance \$3,391.63. In the event the Tenants do not voluntarily comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: March 30, 2021

Residential Tenancy Branch