



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NECHAKO RIVER RANCH LTD.
and [tenant name suppressed to protect privacy]

DECISION

MNDCL-S, MNDL-S, FFL

Dispute Codes

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served each of the tenants with the Notice of Hearing Package via Canada Post Registered Mail. Extensive discussion took place regarding the landlord's submitted documentary evidence. The landlord's agent (the landlord) stated that an updated evidence package was served to both the tenants and the Residential Tenancy Branch containing a total of 106 pages was served to the tenants via Canada Post Registered Mail on February 13, 2021. The landlord also stated that another critical evidence package was served, but that the tenants were likely not yet in receipt of it. After more discussions regarding the critical evidence, the landlord stated that the hearing could proceed as the critical evidence was not critical and that the landlord could proceed in the absence of the tenant's being served with it. On this basis, the hearing proceeded without the 2 late evidence submissions of the landlord. This evidence was excluded from consideration in this decision. Both parties confirmed that the tenants served the landlord with their submitted 26 documentary evidence files via Canada Post Registered Mail on February 17, 2021.

During the hearing the landlord clarified that an amended and updated monetary worksheet was submitted lowering the monetary claim from \$6,123.21 to \$4,739.21.

After 71 minutes the hearing was adjourned due to a lack of time. Both parties were advised of the adjournment process and had confirmed the listed email addresses for delivery of the notice of adjournment. Both parties were cautioned that as the hearing had commenced that no new evidence was to be submitted, nor would it be accepted.

On May 4, 2021, the hearing resumed via conference call with both parties present. Both parties made submissions, presented evidence and were given an opportunity to respond.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 17, 2012 on a fixed term ending on March 31, 2013 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 17, 2012.

The monthly rent was \$1,150.00 payable on the 1st day of each month. A security deposit of \$575.00 and a pet damage deposit of \$575.00 were paid on March 17, 2012. A condition inspection report for the move-in and the move-out were completed by both parties.

The landlord seeks a monetary claim of \$4,739.21 which consists of:

\$150.00	Screen Replacement Cost, 2 @ \$75/ea.
\$225.00	Cleaning, 9 hours @ \$25/hr.

\$1,300.00	Re-Finish Floor, Living Room
\$626.00	Sander Rental for flooring
\$465.00	Water Repair, Damage
\$1,973.21	Unpaid Utility, Hydro

The landlord stated that the tenants vacated the rental unit leaving it dirty and damaged requiring cleaning and repairs.

The landlord stated that upon taking possession of the rental unit the landlord found damage to the screen panels. The landlord seeks an estimated \$150.00 @ \$75.00 each for the two damaged screens based upon her previous experience in replacing screens in the past for the two screens. The tenant disputed the landlord's claim stating that 1 of the screens was broken at the start of the tenancy. The tenant also argued that the cost of screen repair based upon a local company estimate should only be \$25.00 each. The tenant submitted a copy of a "Quotation" for 1 screen replacement at a cost of \$26.29 based upon an invoice dated February 11, 2021. The tenant also referred to a copy of the condition inspection report for the move-in which notes "window screen lower opening small tear/broken rip" for the master bedroom.

The landlord seeks cleaning costs of \$225.00 for an estimated 9 hours to clean @ \$25.00 per hour for the appliances such as the fridge and stove, also the lights, toilets and doors. The tenants dispute this claim arguing that they believe the rental unit was left "reasonably clean". The tenants also stated that the appliances were not on wheels and that they were not given any notice for cleaning the appliances. The landlord has referred to an email dated October 20, 2020 in which the tenant was given a checklist for things to clean. Specifically it states, "Clean in, under and behind appliances, clean lint traps and washing machine". The tenants stated that there was a "manganese build up", "iron settlement" and the landlord was notified. The tenants stated that they must have "missed the door".

The landlord seeks compensation of \$1,300.00 for the estimated cost of re-finishing the hardwood floors in the entry, dining and living room areas and \$626.00 for the cost of a sander rental. The landlord has submitted photographs of the flooring showing the scratched floors. The landlord discovered the flooring damaged with extensive scratches and believes that it was caused by the tenants two dogs. The tenants dispute the landlord's claim arguing that both their dogs are under 50lbs. The landlord has relied upon the completed condition inspection report for the move-in and the move-out for comparison. The landlord has also submitted photographs of the floor damage which shows extensive scratching as per the landlord's submissions from photographs

from pages 78-92 of the landlord's submissions. The landlord relies upon an estimate of 52 hours of labour at \$25.00 per hour and the rental of a sander at \$626.00. The landlord provided testimony that the flooring was 2 years old when the tenancy began.

The landlord seeks \$465.00 for repairs due to water damage. The landlord claims that the window sills and walls have water damage as noted in the submitted landlord's photographs on page 62 and 63 which shows residual glue left on the window frame and wall damage below the windows caused most likely by moisture. The landlord noted that photographs 64 and 65 show the drywall damage peeling off of the wall. Photographs 66, 67, and 68 also show damage to the window sills of paint peeling which the landlord claims is due to moisture problems. The landlord refers to the monetary details breakdown that a total of 15 hours was spent sanding the window sills, removing wall paper, priming and painting these areas at \$25.00 per hour plus the cost of \$90.00 in materials. The tenants have disputed this claim arguing that there are extreme temperature changes in this area and the tenants needed to insulate the windows. The tenants argue that the paint flaking and the wall paper peeling were due to not having a working bathroom fan and normal wear and tear. The tenants agreed that the likely cause was due to moisture buildup. The tenant also argues that the landlord has failed to provide any receipts for any materials bought.

The landlord seeks recovery of \$1,973.21 in unpaid utilities which are from hydro. The landlord has referred to page 95 of the landlord's submitted documentary evidence which shows a letter dated October 28, 2020 with a detailed breakdown of the owed hydro costs for the period April 2019 to December 2019 for \$899.81 and a letter dated October 31, 2020 with a detailed breakdown of the owed hydro costs for the period January 1, 2020 to October 31, 2020 for \$1,073.40. The landlord has also submitted copies of the hydro statements with a billing date of May 3, 2019, July 3, 2019, September 3, 2019, November 1, 2019, January 3, 2020 and March 3, 2020, May 1, 2020, June 30, 2020 and August 31, 2020. The tenant confirmed in his direct testimony that the tenants had not previously paid the utilities over the last 2 years. The tenant argued that they were billed for the last 1 ½ years by the landlord. The tenants do not dispute the landlord's monetary claim for utilities.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of both parties and find on a balance of probabilities that the landlord has failed to establish a claim for the \$150.00 screen replacement repair of \$150.00. The landlord relies solely on his direct testimony of his experience replacing screens at \$75.00 each. The tenants have disputed this claim arguing that at least 1 screen was damaged at the start of the tenancy as per the submitted copy of the condition inspection report from the move-in. The tenants have also argued that the monetary claim amount is disputed as per the submitted copy of a "quotation" for a screen replacement at \$26.29. On this basis, I find that this portion of the landlord's claim is dismissed without leave to reapply as the landlord has failed to provide sufficient evidence to satisfy me of this claim.

On the landlord's claim for \$225.00 for cleaning, I find that the landlord has been successful. The landlord provided details of 9 hours of cleaning at \$25.00 per hour in conjunction with the completed condition inspection report for the move-in conducted on March 17, 2012 in comparison with the submitted photographs of the rental unit at the end of tenancy. Despite the tenants disputing the claim for cleaning and arguing that the appliances were not on wheels to allow them to move them, the landlord submitted photographs of the appliances which clearly show wheels on the appliances. I note that this is comparable to the completed condition inspection report for the move-out where the landlord has noted "dirty behind appliances" which was disputed by the tenants in the report. I find on a balance of probabilities based on these two factors along with the landlord's submitted photographs that the tenants vacated the rental unit leaving it dirty requiring cleaning. On this basis, I find that the landlord is entitled to recovery of cleaning costs of \$225.00 for the 9 hours of cleaning claimed.

On the landlord's \$1,300.00 claim for refinishing the wood floors with an estimated 52 hours of labour at \$25.00 per hour and the \$626.00 sander rental, I find that the landlord has been successful for the \$1,926.00 claims. The landlord provided sufficient evidence of the condition of the hardwood floor between the start of the tenancy and the conclusion by providing the condition inspection report for the move-in in comparison with the incomplete condition inspection report for the move-out and the undisputed submitted photographs of the flooring at the end of tenancy. I find that the scratches

were likely caused by the tenants dog and not through normal wear and tear. However, the landlord confirmed that the age of the flooring was 2 years old by the time this tenancy began. Residential Tenancy Branch Policy Guideline #40, Useful Life of Building Elements states in part that hardwood floors have a useful life of 20 years. On this basis, the tenants are credited with 2 years for this claim. The \$1,926.00 claim is divided by 20 years to equal \$96.30 per year. I find that the tenants are credited with 2 years totalling \$192.60 leaving a loss of useful life for the landlord of \$1,733.40. The landlord is granted \$1,733.40 for this claim.

On the landlord's claim for \$465.00 for the 15 hours of labour and \$90.00 in materials, I find that the landlord has been successful. Despite the tenants claim that the rental property area suffered extreme temperature changes and the need to insulate the windows, the tenants have duty of care to maintain the rental unit by dealing with moisture build up and notifying the landlord of such issues. The landlord has provided undisputed evidence of damage which requires repair of the window sills and walls. The landlord has also provided undisputed evidence that none of the damage was noted at the start of the tenancy. I reject the tenants claims that the paint flaking and moisture damage to the walls to be as a result of normal wear and tear. I find that despite the landlord's lack of receipts, I find that the 15 hours of labour and \$90.00 in materials which is likely paint to be reasonable in the circumstances.

I find on a balance of probabilities based upon the undisputed affirmed evidence of the landlord and the tenants acceptance of the monetary amount that the landlord has provided sufficient evidence to satisfy me that the tenants failed to pay hydro utilities of \$1,973.21. The landlord provided undisputed evidence of the owed utilities in the two submitted letters and the accompanying statements. The tenants confirmed that no hydro utilities have been paid for the last 2 years of the tenancy and that the tenants have no reason to dispute the claim amount.

The landlord has established a total monetary claim of \$4,396.61. The landlord is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$575.00 security deposit and the \$575.00 pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$3,246.61.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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 19, 2021

Residential Tenancy Branch