Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the rental unit, to retain all or part of the security deposit, compensation for damage or loss under the Act and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied for compensation for damage or loss under the Act and return of the deposit paid to the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. All evidence and testimony was considered.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit and damage or loss under the Act in the sum of $2,767.00?

May the landlord retain the deposit paid in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs in the sum of $50.00?

Are the tenants entitled to compensation in the sum of $2,500.00?

Are the tenants entitled to return of double the $750.00 deposit paid to the landlord?

Background and Evidence

The tenancy commenced on June 1, 2010; rent was $1,500.00 per month, due on the first day of each month. A deposit in the sum of $750.00 was paid on May 21, 2010. The tenancy ended, with the tenants vacating on January 23, 2011, as the result of an Order of possession issued for unpaid January 2011, rent owed.

On January 24, 2011, the tenants left the landlord 1 key and their written forwarding address at the rental unit.

A move in and move out condition inspection report was not completed.

The landlord provided a detailed calculation of the following claim for compensation:

Alpine disposal dump fees	70.70
Avis Power Vac – chimney cleaning	369.60
Lock replacement	98.54
TOTAL	696.84

The tenants provided a detailed calculation of the following claim for compensation:

Return double the deposit	1,500.00
Hydro bill compensation	300.00
30% rent reduction September to December, 2010	1,800.00
TOTAL	4,000.00

The landlord and tenants submitted receipts in support of the items claimed above.

The landlord and tenant agreed that the tenant broke the glass door to the fireplace insert; the cost of replacement after the tenancy ended was $158.00.

The landlord received return of one key to the rental unit and purchased a complete lock set. The tenants stated they returned the only key to the home that they had received.

The parties agreed that on January 2, 2011, the chimney caught fire and that the fire department attended at the rental unit. The landlord submitted a chimney cleaning invoice for costs she believes the tenants must pay, as the fire department told the landlord to have the chimney cleaned as a result of the fired. The tenants had used the fireplace insert without the door closed. The landlord testified that she had the chimney cleaned in May 2010.

The tenants stated that they were not responsible for chimney cleaning, that the landlord had not provided any proof of previous cleaning and that the invoice included

costs for ductwork cleaning and filters. The tenants testified that they were not, at any time, told to cease using the fireplace.

The tenants submitted a copy of a Colwood Fire Rescue report that contained an issuing officer name; the report was not signed or dated. The landlord confirmed she had talked over the telephone with the issuing office, who told her to have the chimney cleaned. The report had a handwritten note that indicated the fireplace door required replacement and a recommendation that the occupants take up residence elsewhere due to the absence of heat in the home.

The landlord claimed garbage hauling costs as the tenants left refuse behind after they moved out. The tenants denied having left anything but several bags of garbage. The tenants stated that the landlord had left numerous belongings on the property and that after they moved out the landlord listed the property for sale and decided to remove items that were there prior to the start of the tenancy.

The tenant's supplied copies of emails sent between the parties; one dated August 19, 2010, from the landlord indicating that her friend would come to the home to address some of the issues raised by the tenants. The tenants had emailed the landlord on August 18, 2010 requesting repairs to a number of items, including the fresh air ventilation duct. The August 18, 2010 email mentioned that the ventilation required improvement as it would be costly to heat the house.

The tenants reported a problem with the oil furnace in September and on the 29th the landlord responded to their email by telling them her friend would contact them and complete the work on Tuesday. The furnace repairs were not made until the beginning of November, but it ceased working several days later.

The tenants testified that they were too patient with the landlord and tried to manage by using the space heaters that were in the home. The tenants stated they made numerous calls to the landlord throughout the tenancy, requesting the furnace be repaired. A notice posted to the furnace indicated it had been serviced in 1992; a photograph of that notice was supplied as evidence. The tenants kept waiting for further repairs and by January 2, 2011, when the fire occurred, they determined they could not live in the home any longer.

The landlord stated that the tenants allowed the heating oil tank to run dry and that there were no problems with the tank.

When the fire occurred the landlord offered the tenants a hotel room; they declined and went to stay with family. At this time the landlord acknowledged she had offered to pay the tenant's hydro bill, as she felt badly for them and was trying to assist, due to the inconvenience of the fire and lack of heat.

The tenants submitted a copy of a BC Hydro bill for services from October 5 to December 3, 2010, in the amount of $367.70. The usage chart showed a large increase in consumption since the last bill issued. The tenants had been using heaters left in the unit by the landlord; which they submitted caused the hydro costs to be higher than expected.

The tenants supplied a copy of a Columbia Fuels receipt issued December 17, 2010, in the sum of $326.00 for a partial tank fill-up. The tenants provided copies of emails sent by Columbia Fuels in March, 2011, explaining that there had been water in the oil tank, but they had not been able to determine that amount. The email stated that most tanks contain some water; there was no information disclosed on any past service to that tank on behalf of the landlord.

The tenants are claiming a refund of the oil put into the tank.

The landlord stated the tank had been replaced in 2005 after she purchased the property and that there were no problems with this relatively new tank.

The tenants stated that they left the landlord their forwarding address, at the rental unit on January 24, 2011, with the 1 key they had received. The landlord applied to retain the deposit within fifteen days; February 8, 2011.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The details of dispute section of the landlord's claim and the monetary worksheet completed by the landlord did not set out any claim beyond $696.84; therefore, the balance of the landlord's claim is dismissed.

I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Wilk Stove – door replacement	158.00	158.00
Avis Power Vac – chimney cleaning	369.60	0
Locks replacement	98.54	0
TOTAL	696.84	158.00

In the absence of a move-in and move-out condition inspection report and, based on the disputed testimony and absence of evidence of the presence of refuse at the start of the tenancy, the claim for garbage removal is dismissed.

The tenant acknowledged that she broke the glass to the fireplace door and, on the basis of verification of the cost incurred by the landlord; I find the landlord is entitled to compensation.

There was no evidence before me that the chimney had been previously cleaned or, that the fire department determined there was any negligence on the part of the tenants; therefore the claim for chimney cleaning is dismissed.

There was no evidence before me that recorded the number of keys given to the tenants at the start of the tenancy; therefore, I find that the landlord is not entitled to the costs for rekeying the home; as the landlord did receive 1 key.

I find that the tenants are entitled to the following compensation:

	Claimed	Accepted
Furnace oil reimbursement	300.00	0
Hydro bill compensation	300.00	300.00
30% rent reduction September to December, 2010	1,800.00	0
TOTAL	4,000.00	1,050.00

As the landlord claimed against the deposit within 15 days of receiving the tenants written forwarding address, I find that section 38(6) of the Act does not apply and that tenants are entitled to return of the deposit paid in the sum of $750.00. No interest has accrued.

There is no evidence before me in relation to the amount of heating oil that was in the tank at the start of the tenancy, how much oil the tenants used and how much oil remained in the tank at the end of the tenancy. In the absence of evidence demonstrating how much, if any, oil the tenant's used, I dismiss their claim for heating oil costs. Further, if the tenants had used heating oil, this would demonstrate some successful use of the furnace.

I find there was some issue with the heating system and based on the landlord's testimony, that on January 2, 2011, she did offer to pay the tenant's hydro bill, the tenants are entitled to compensation in the sum of $300.00 for hydro costs.

Section 7 of the Act requires a claimant to do whatever they can to minimize a claim made. The tenants stated that had not taken decisive action in relation to the lack of heat. The tenants did not submit an application early in their tenancy requesting a repair Order; therefore, in the absence of evidence of any attempt to mitigate the loss

claimed, I find that reimbursement of the hydro cost is sufficient compensation and that the balance of the claim is dismissed.

As each party's application has some merit, I decline filing fee costs to the landlord.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $158.00, which is comprised of fireplace door replacement costs.

I find the tenants have established a monetary claim in the amount of $1,050.00, which is comprised of return of the $750.00 deposit plus hydro costs in the sum of $300.00; less the amount owed to the landlord.

Based on these determinations I grant the tenants a monetary Order for the balance of $892.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, 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 *Residential Tenancy Act*.

Dated: April 11, 2011.

Residential Tenancy Branch