FINAL DECISION

Dispute Codes:

MNDC, OLC, ERP, RP, PSF, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have requested compensation for damage or loss under the Act, Orders the landlord comply with the Act, make repairs and emergency repairs, provide services or facilities required by law and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

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. I have considered all of the evidence and testimony provided.

Preliminary Matters

An initial hearing was held on February 13, 2012; the hearing was then adjourned to April 2, 2012.

An interim decision was issued and mailed to the parties on February 13, 2012. That interim decision directed the tenants to retrieve the photographs they had previously submitted to the Residential Tenancy Branch (RTB), number them and to submit exact numbered copies to the Residential Tenancy Branch and the landlord; no additional evidence was to be submitted.

On the morning of the reconvened hearing the tenants submitted a package of 107 photographs to the RTB; these were not served to the landlord. The tenants also made additional evidence submissions; neither of these items was considered as the landlord was not served with the photographs and the interim decision specifically informed the parties that no new evidence submissions would be accepted.

The landlord had previously confirmed receipt of evidence from the tenants marked as "booklet #2," the RTB had also previously been served that evidence. Therefore, as the tenants failed to follow the instructions given at the initial hearing I determined that any photographs the tenants wished to refer to during the hearing, outside of those contained in "booklet #2" must be located by each party, in order to be considered. This occurred in relation to 3 photographs; the balance of the photographs was not considered.

The monetary claim was also adjusted to include the sum for moving costs that had been included in the tenant's original claim.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss under the Act in the sum of $4,239.00?

Are the tenants entitled to the filing fee costs?

Background and Evidence

I considered the following claim:

Cleaning service	275.00
½ October 2011 rent	675.00
Loss of laundry/quiet enjoyment Oct. 21, 2011 – January 31, 2012	1,300.00
Dry cleaner, clothing costs	299.01
Clothing costs	997.26
Moving cost	500.00
TOTAL	4,224.32

This 1 year fixed-term tenancy commenced on October 15, 2011; rent was $1,350.00 per month, due on the first day of each month. The tenants took possession of the unit on October 13, 2011, and moved-in on October 23.

No move-in condition inspection report was completed. A copy of the tenancy agreement was supplied as evidence; laundry was an included service. The tenancy ended by written mutual agreement on January 31, 201; a copy of which was supplied as evidence.

The parties each submitted email evidence which showed they regularly communicated via email. The emails commenced on the date the tenants took possession of the rental unit.

In early January 2012, the landlord hired a property management company who then assumed responsibly for the tenancy.

The tenants testified that when they moved into the home on October 23, 2011, it was not sufficiently clean. On that date, the tenants made their first complaint to the landlord, who, on the next day, had a professional cleaning company provide over 1 hour of cleaning, by a team of workers, costing $262.50. The tenants paid for this cleaning with the understanding they would be reimbursed. A copy of the receipt issued to the male tenant was supplied as evidence.

The tenants continued to be dissatisfied with the level of cleanliness, informed the landlord of their concerns and, with approval of the landlord, had a second cleaning service come into the home; an invoice dated October 27, 2011, in the sum of $275.00, was supplied as evidence for cleaning completed by E.F. Housecleaners.

The tenants written submission indicated they could not use the shower for 3 days, they were disturbed by neighbours; that the fridge was not cleaned to standard; that hairs were found beneath the bathroom drawers; that most door knobs and light switches had oil and skin residue on them; the carpets had a vague smell of dust and potential dry rot; that they could not do laundry until the 3rd week of the tenancy and that the bathroom fan was never cleaned. The tenants submitted that they incurred costs in the sum of $500.00 to move from the unit after a 3.5 month tenancy.

The landlord supplied a copy of an October 24, 2011, email sent to the neighbour, asking that they deal with issues reported in relation to property they managed next to the landlord. The landord indicated they did not wish to call the police and requested the neighbour deal with their occupants, so his tenants would not be disturbed. The neighbour replied that she would immediately write a letter to her occupants and that the police should be called if any further disturbances occurred. No further evidence of complaints was submitted.

The tenants continued to be dissatisfied with the state of the unit and on October 29, 2011, requested further cleaning. The landlord immediately agreed to an additional 2 hours of cleaning costs. Two days later the tenants requested carpet cleaning; reported that the bathroom was dirty and that the washing machine and dryer needed cleaning. The tenants had 10 loads of laundry waiting to be cleaned, but the machines first required attention.

The tenants referenced a photograph taken of the base of the toilet; a cotton swab had been used to demonstrate the need for cleaning.

On November 1, 2011, the landlord offered to let the tenants end the fixed-term tenancy, as they felt they had been fair with the tenants who seemed to be dissatisfied with the unit. The landord said the carpets had been cleaned, but they were older and a bit discoloured; a copy of the carpet cleaning invoice for the cleaner used on October 12, 2011, was supplied as evidence. The landlord agreed to a final hour of cleaning in the sum of $25.00, for a total of eleven hours. At this time the tenants requested permission to call a washing machine technician.

On November 3, 2011, the tenants emailed, stating that “cleanliness was next to godliness” for the female tenant and that after running the washing machine through 4 cycles there was a yellow residue coming from the inner tub and that it was odorous.

On November 4, 2011, the landord authorized the tenants to contact a technician to look at the washing machine; he requested feedback on the investigation. The landlord

checked back with the tenants on November 14, 2011, to see what they might have found in relation to the machines.

The tenants had attempted to rectify the problem themselves by using refresh tabs, bleach and washer cleaner and on November 16, 2011, told the landlord that other than a smell of rubber, the machine was fine at that point.

On November 21, 2011, the tenants reported a new problem with the washing machine; they believed the machine was causing their clothes to pill. The tenants now wished to have the landlord investigate the issue. The landlord responded on the same day indicating he had talked with a technician who gave advice on machine use; the technician had declined a service call, as he determined it was likely an issue related to the use of front load machines. The landlord offered to bring the tenants the machine manual. The landlord suggested the tenants call the technician; his telephone number and name were provided. The tenants confirmed that they had already talked with that same technician, who had also told them a service call was not recommended

On November 21, 2011 the tenants hired a technician from a different company to come to the home to assess the washing machine. The invoice supplied as evidence indicated that the tenants reported the clothes were pilling and the machine had odours. The technician determined that there were no obvious faults with the machine that tech support was contacted and no bulletins were issued by the manufacturer. There was a small leak, but no repair was made.

The landlord sent the tenants a November 23, 2011, email confirming that the tenants were owed reimbursement for cleaning and, after meeting with the tenants on that date; the landlord sent another email summarizing their agreement:

- That the landlord had authorized 11 hours of cleaning;
- That they had the initial receipt ($262.50) and were awaiting the 2nd invoice from the tenants;
- That if the tenants could not obtain an invoice for the 2nd cleaning service they could create their own invoice for the cost they incurred; and
- That a professional carpet cleaner would be hired.

The landlord also informed the tenants of their intention to hire a professional property management company.

On December 1, 2011, the tenants agreed to the compensation offered and gave the landlord a cheque in the sum of $752.52 for December rent owed; a reduction of $597.48. The tenants created an invoice for the landlord, in the sum of $305.00, as they could not locate the invoice for A.E. Housecleaning.

The tenants stated the $305.00 was meant to be in addition to the invoiced costs for the professional cleaners. The email from the tenants stated the “$752.52...includes the receipts we agreed upon. Also it is conditional to us producing an official receipt for our

time cleaning, since I haven't been able to track down an official receipt from A.E. Housecleaning."

On January 5, 2012, the tenants located the receipt for the A.E. Housekeeping service and indicated they wanted payment for that service in the sum of $275.00. The landlord stated that the tenant's invoice in the sum of $305.00 had been accepted in lieu of the official invoice that the tenants could not locate. The tenants have claimed the additional cost, as they had charged the landlord for their own time and expected to also be reimbursed for the 2nd professional cleaning service cost, once the invoice was located.

The property management representative had been hired and began to deal with the tenants in relation to the washing machine, with a report made by the tenants on January 3, 2012; that they could not use the machine. With the landlord's permission, a different appliance company was then contacted by the property manager.

The tenants supplied a copy of a January 10, 2012, email indicating that a new service company checked the washing machine on January 9, 2012. The repair company responded on January 18, 2012, apologizing for the delay. They suggested the machine be replaced, but did not know if the landlord would prefer to have the machine repaired or not. The email indicated the machine would be repaired by the next Monday or Tuesday. The landlord confirmed that a new machined was purchased, but not installed until after the tenants vacated the unit.

The landlord supplied photographs showing the inside of their home machine; comparing it to the rental unit machined and new machine. All units were the same make. The landlord stated there was nothing wrong with the drum of the machine in the rental unit and that the photographs showed no differences.

The tenants submitted photographs of the inside of the washing machine, articles of clothing such as jeans and shirts and multiple receipts for the costs of jeans. The tenants have claimed costs for replacement of jeans and clothing that had pilled and been damaged by the washing machine. The tenants had some items dry cleaned and have claimed those costs, as they did not feel comfortable using the washing machine.

The tenants claimed loss in the sum of $10.00 per day from October 31, 2011 to January 31, 2012, "for the complete loss of the washing machine due to a faulty drum, the lack of proper use resulting in a foul odour and extensive damages." The claim reflects the losses incurred as the result of time spent going to Laundromats, fuel costs, the embarrassment of wearing dirty clothes and "struggling with the imposed alteration of everyday habits."

The tenants have claimed loss of quiet enjoyment equivalent to one half of one month's rent, as a result of having to move into unsanitary conditions.

The tenants submitted receipts for printer ink costs incurred and photograph development.

The landlord submitted that they responded in a timely manner to the complaints made by the tenants; they provided cleaning services, reimbursed the tenants for costs and obtained the advice of service technicians.

The landlord submitted copies of advertisements for jeans and pointed out that the tenants were claiming the jeans had been damaged, but that comparable new jeans were distressed and had holes; that this was a style, not due to any damage caused by the washing machine.

When the landlord received professional advice that the drum on the washing machine was damaged they agreed to replace the machine. The landlord was informed on January 19, 2012, of the need for a new machine and one was purchased on January 22, 2012; it was not installed until after the tenancy ended on January 31, 2012.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenants to prove the existence of the damage and loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the tenants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In relation to the cleaning costs claimed by the tenants, I find that the evidence before me indicates that the landlord and tenants had reached agreement on December 1, 2011, to accept the December rent reduction in satisfaction of the cleaning that had been paid for by the tenants to the 2 professional companies. I find, on the balance of probabilities, that the landlord had not agreed to pay the tenants for any additional cleaning time and that the tenant's invoice created on December 1, 2011, was meant to replace the invoice they could not locate. Therefore, the claim for additional cleaning costs is dismissed.

In relation to the invoice supplied for the technician visit made to assess the washing machine on November 21, 2011; on November 16, 2011, the tenant had indicated that the machine was fine. There was no evidence before me that between November 16 and 21, 2011, the landlord had given the tenants permission to hire a technician; it had been suggested that they speak with a specific technician. The tenants have claimed the cost for a service call that was not approved of by the landlord, which resulted in a determination that repairs were not required to the machine. Therefore, in the absence of evidence that the service call was approved or required, I dismiss this portion of the claim.

The tenants claimed compensation equivalent to the first 2 weeks of their tenancy due to the loss of quiet enjoyment as the result of having to deal with the need to clean the unit. The tenants have been compensated for out-of pocket expenses for the cleaning costs.

Residential Tenancy Branch Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenants, the reasons for the disruptions, if there was any benefit to the tenants for the disruptions and whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

There is no evidence before me that the amount of reported disruption caused any loss of value to the tenants. The landlord hired a professional cleaning company the day after a report was made requesting cleaners. The landlord provided further cleaning services 3 days later. I find that the absence of a move-in condition inspection contributed to a situation where the tenants moved in to a unit that had some deficiencies; however, once notified the landord responded quickly and without hesitation by allowing the tenants to hire professional cleaners.

The tenants described disruptions that appeared to be inconsistent with a claim for complete loss of use of the unit for a 2 week period of time. There was no evidence before me that the inconvenience experienced by the tenants amounted to a complete loss of use between October 15 and 31; the tenants did not even take possession of the unit until October 23, 2011. There was no evidence before me that the tenants had to vacate the rental unit and reside elsewhere for a 2 week period of time. Therefore, in the absence of evidence supporting the claim that the tenants suffered a loss equivalent to a complete loss of value for the first 2 weeks of the tenancy, I find that this portion of the claim is dismissed.

I have considered the claim for loss as a result of problems reported with the washing machine and the cost of clothing. I find, on the balance of probabilities, that there was no evidence of any deficiency with the washing machine until a technician assessed the machine on January 9, 2012. The parties had each attempted to determine if there was a problem with the machine prior to this time; all efforts failed to result in a determination that the machine was faulty and, in fact, as late as November 16, 2011, the tenants reported the machine was fine. The technician hired by the tenants on November 21, 2011, found no fault with the machine. If a technician could not discover any deficiencies, then I find it is reasonable to relieve the landlord of any fault for not replacing the machine at that time.

It was not until the property manager assumed responsibility for the unit and hired another service company that fault was found with the machine. From this point onward, I find that the tenants did suffer a loss of the use of laundry service for a washing machine only. Therefore, I find that the tenants are entitled to nominal loss of laundry service from January 9, 2012, the date the unit was determined to be faulty, until the end of the tenancy, January 31, 2012, in the sum of $50.00.

In relation to the claim for the cost of clothing, I find, on the balance of probabilities, that the tenants did not suffer any loss of value. The photographs supplied by the tenants were not dissimilar to those provided by the landlord, of new distressed jeans. In order to prove that the machine had damaged the clothes equivalent to the value of the total receipts submitted as evidence, the tenants would have had to prove the state of the clothing at the start of the tenancy and then demonstrate that the clothes had seriously deteriorated after using the washing machine. There was no definitive evidence before me in support of this claim. Therefore, the claim for the loss of clothing is dismissed.

The tenants have claimed costs for photographs and printer ink. An applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but “costs” incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied.

There was no evidence before me that this tenancy was so fraught with difficulty that it should end; the parties simply reached a mutual agreement to end the tenancy, so that the tenants could exit from a fixed term agreement. Therefore, I find that the claim for moving costs has no merit and it is dismissed.

As the tenant’s claim has some merit I find they are entitled to filing fee costs.

This decision should be read in conjunction with the February 13, 2012, interim decision.

Conclusion

The tenants are entitled to compensation in the sum of $50.00 for loss of use of laundry services, plus the $50.00 filing fee.

The balance of the claim is dismissed.

Based on these determinations I grant the tenants a monetary Order for $100.00**.** 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 16, 2012.

Residential Tenancy Branch