Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction
This hearing dealt with two related applications. One was the tenant's application for return of double the security deposit. The other was the landlords' application for a monetary order. Both parties appeared and had an opportunity to be heard.

The hearing commenced August 13, 2014. The parties did not complete all their evidence on that date so the hearing was continued to a date and time convenient to the parties – August 27 at 1:00 pm. The hearing was concluded on August 27.

As the parties and circumstances are the same on both applications, one decision will be rendered for both.

Preliminary
The landlords filed their application for dispute resolution on August 5 claiming damages of $3244.20. After filing and serving the claim and initial evidence package the landlords served and filed several other evidence packages. In the evidence package filed on August 12 the landlords' submission stated that they were increasing their claim to $6951.54 and in the evidence package filed on August 25 the landlords again increased their claim – this time to $8842.50.

The Residential Tenancy Branch Rules of Procedure provide that :

- If a party is amending their claim they should make a formal amendment to the application; not just ask for more in their submissions.
- Amended claims should be served or filed 14 days before the date set for hearing.
- If the amendment takes the claim over $5000.00 the applicant should pay the additional $50.00 filing fee.
- Claims should not be amended partway through a hearing.

Although the landlords did not comply with these procedural requirements, in the interests of resolving all issues between these parties, I have considered and decided all of the landlords' claims rather than dismissing any with leave to re-apply.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background, Evidence, Analysis and Findings

Policy Guidelines

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Terms of the Tenancy Agreement

The landlords are a family enterprise and two of the individual family members that are part of the enterprise.

This tenancy commenced May 1, 2010. The parties signed a one year fixed term tenancy agreement. The monthly rent, which was due on the first day of the month, was $875.00. The rent reflected a $50.00 per month credit for the tenant maintaining and cleaning the suite, yard, driveway and walkways. The tenant paid a security deposit of $435.00.

The tenancy agreement specified that there were to be no pets; no smoking inside the premises, and no subletting.

A move-in inspection was conducted and a move-in condition inspection report was completed.

The tenancy agreement provided that upon the expiry of the term the tenancy could continue as a month-to-month tenancy at a monthly rent of $975.00. Although the landlord offered the tenant another one year fixed term tenancy the tenant chose not to do so. The tenant paid $925.00 per month which reflected a $50.00 per month deduction for maintaining the yard and rental unit.

At the end of March 2014 the tenant gave the landlords written notice to end tenancy effective April 1, 2014.

Move-Out

On March 30 one of the landlords and the tenant walked through the rental unit and filled out a preliminary condition inspection report that itemized the cleaning, repairs, replacement of certain items and yard work that needed to be done. This document was filed as Exhibit 14 of the landlords' evidence.

The landlord received the tenant's forwarding address at this time.

The parties agreed that there would be a move-out inspection on April 30.

The landlord testified that on April 30 he and another family member were at the rental unit at 7:00 pm. The tenant was still moving so they did not go in.

The tenant testified that on April 30 she, a friend, and the landlord walked through the rental unit. The landlord expressed satisfaction with the condition of the unit except for the take and adhesives on the refrigerator door. She signed the move-out condition inspection report and the landlord promised to send her a copy with the damage deposit. She said she signed the report in the wrong place by putting it beside the move-in line, not the move-out line.

She went back to the unit on May 1, removed the adhesive with solvent, and sent before and after pictures to the landlord with a text message. In the same message she also advised the landlord that she had put the key in the mailbox.

She received a copy of a move-out inspection condition inspection report on May 31. She said that the negative notations were added after she signed it.

The tenant's friend testified to the same effect.

In his rebuttal evidence the landlord directed me to the move-in condition inspection report, which has the signatures of the landlord and the tenant in exactly the same locations as where the tenant said they singed on April 30, as proof that the parties did not sign the report on April 30 and that the tenant's testimony was untruthful.

The *Residential Tenancy Act* places great emphasis on condition inspections and condition inspection reports. It rewards parties who complete them properly and penalizes those who do not. The *Act* and the *Residential Tenancy Regulation* set out very detailed procedures for the completion of these inspections and documents.

Section 35(1) of the *Act* states that a landlord and a tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental:

- on or after the day the tenant ceases to occupy the rental unit; or,
- on another mutually agreed day.

Subsection (2) states that the landlord must offer the tenant at least two opportunities, as prescribed, for the inspection.

Section 14 of the *Regulation* states that a move-in or move-out inspection must be done when the rental unit is empty of the tenant's possessions, unless the parties agree to a different time.

Section 17 of the *Regulation* sets out the procedure for scheduling a move-out inspection. The landlord proposes one or more dates and times. If the tenant is not available at the time proposed by the landlord the landlord must propose a second opportunity, different from the dates and times first suggested, by providing the tenant with a notice in the approved form. This form is the Notice of Final Opportunity to Schedule a Condition Inspection.

If a landlord follows this procedure and the tenant does not attend the landlord may make the inspection and sign and complete the report without the tenant.

Section 36(1) of the *Act* provides that a tenant's right to return of the security deposit is extinguished if the landlord has followed the above procedure and the tenant has not participated on either occasion.

Section 36(2) provides that a landlord's right to claim against a security deposit or pet deposit is extinguished if, among other things, the landlord does not comply with section 35(2).

The landlords did not serve the tenant with a Notice of Final Opportunity to Schedule a Condition Inspection, thereby not complying with section 35(2) of the Act. This means that the tenant's right to return of the security deposit was not extinguished but the landlord's right to claim against the security deposit was. (Although pursuant to section 72(2) if any money is found to be owed to the landlord by the tenant any security deposit or pet damage deposit due to the tenant may be applied to the amount owed to the landlord.)

I do not accept the tenant's evidence that a move-out inspection was conducted on April 30 or that she signed any document on that date. I find that the document filed in evidence was completed on March 30.

While the document completed on March 30 is not a condition inspection report to which section 21 of the *Regulation* applies and does not have the same conclusive weight as a report completed in accordance with the legislation it is still evidence that may be considered.

Standards Applied to Claims for Damage or Cleaning

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Policy Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

With regard to claims for cleaning section 32 of the *Act* requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the residential property to which the tenant has access*. Residential Tenancy Branch Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides a more detailed description of the standard that will be applied by arbitrators. The Guideline points out that the standard is "reasonable which is not necessarily the standard of the arbitrator, the landlord or the tenant."

Flooring

The landlord says that although repeated attempts were made to remove stains from the carpet the stains could not be removed and had to be replaced. The carpet had been installed in 2009.

The landlord filed invoices from:

- A carpet cleaning company dated May 17, 2014 in the amount of $73.86. The invoice refers to treatment of two stains.
- A family member dated August 10, 2014 in the amount of $75.00 for removing carpet stains.
- A carpet store dated June 3, 2014 in the amount of $1145.10.

Although the landlords' submission referred to a cost of $350.00 for installation of the flooring there was no invoice for this amount filed as part of the evidence.

The expectation is that after a tenancy of a year or more tenants will have the carpets shampooed or steam cleaned. Accordingly, I allow the landlords' claim for carpet cleaning in the total amount of **$148.86.**

Based on the photographs filed by the landlord I am satisfied that the carpet was badly stained and that replacement was necessary. Based on the invoices filed by the landlord I find that the carpets were five years old. The expected useful life of carpets in a rental unit is ten years. Applying a depreciation rate of 50% I allow the landlord **$572.50** for carpet replacement.

Internal Window Coverings

The landlord's evidence was that the blinds were from 2009 or earlier. The expected useful life of metal venetian blinds in a rental unit is ten years. He said they replaced one blind but did not file an invoice for that item nor did their material specify a cost for this item. Some other blinds are being replaced because the new tenant does not like the existing window coverings. This claim is dismissed because the evidence is inadequate.

Three latches had to be replaced on the living room windows. The invoices filed in support of this claim are Ex. 10-4, which is for two items at a total cost of $11.38, and Ex. 10-8 which is for a "glass door H" at a cost of $32.47. Ex. 10-8 does not appear to be related to the windows. **$11.38** will be allowed for this item.

There is no invoice that relates to cleaning the window coverings.

Windows and Doors

Tenants are expected to clean inside windows, doors and tracks, including mold removal. I am satisfied that the tenant did not do so. The landlord filed an invoice for a cleaning company dated May 30, 2014, for this item in the amount of **$140.00.** The amount is allowed in full.

The screen door was damaged. According to the landlords' material it was new in 2009. The replacement cost of the door was $222.88 according to the invoice dated June 11, 2014. There was also an invoice in the amount of $11.05 for patio door parts.

Guideline 40 gives the expected useful life of a door as twenty years. It does not give an expected useful life for a sliding screen door. Common sense dictates that the

useful life of a sliding screen door will be considerable shorter than a solid door on hinges. I find that ten years is a reasonable estimate for the expected useful life of a sliding screen door in a rental unit and apply a depreciation rate of 50% to this claim. I allow the landlords **$117.00** for this item.

Damage to Major Appliances

The landlords filed an invoice from Walmart dated May 21, 2014 for plumbing parts in the amount of $37.14. He gave oral testimony about steel wool caught under the agitator of the washing machine, damage to the dishwasher caused by dirty filters, damage to the refrigerator racks, a problem caused to the dryer because the vents were not properly cleaned. However, the only amount specified was $75.00 for the plumber's visit to unclog the sink and no invoices were filed regarding any of the other items. I am satisfied, based upon the photographs filed by the landlord, that there were several items clogging the drain and $75.00 seems a reasonable amount for a plumber. In total I allow the landlords **$112.14** for damage to the appliances.

Walls

The expected useful life of interior paint in a rental unit is four years. Assuming that this unit was freshly painted at the start of this tenancy – a statement the tenant disputes – the depreciation rate to be applied to painting is 100%. Accordingly, nothing will be allowed for painting for ordinary preparation for painting.

However, as set out in *Guideline 1*, a tenant must pay for repairing any walls where there has bee an excessive number of nail holes, large nails, or screws, or where there has been deliberate or negligent damage to the walls.

The tenant testified that he and the tenant went through the unit very carefully on March 30. The report he prepared on that date indicate some stains and slight marks on the living room walls and floors, two holes in the walls of the second bedroom. In his oral testimony the landlord said that at the end of the tenancy there were five significant holes in the unit, each about three inches by four inches; two in the living room, two in the second bedroom, and one in the hallway. There had been lots of posters in the third bedroom and so there were many pinholes that had to be replaced. He also said there were four hooks for plants in the third bedroom; two in the ceiling and two in the walls.

The tenant says there were two badly patched holes in the second bedroom at the start of the tenancy. However, nothing is noted on the move-in condition inspection report. She says there were no holes in the living room walls but her material does say there was a stain.

According to the landlord the stain was so dark that it could not just be painted over; the drywall had to be removed and replaced before the wall could be painted.

The landlords' summary refers to labour done by Dallas and Mark to repair, prep and prime drywall apparently attached as Ex. 199. There was no Ex. 100 in the landlords' various evidence packages so it is impossible to determine what portion of those invoices relate to hole repair and what portion relate to painting.

There is also an invoice from one of the family members for repairing holes and sanding in the amount of $50.00.

I allow the landlords **$50.00** for wall repair.

Smoke Detectors

The smoke detectors were installed in 2009. The landlord says that at the end of the tenancy one was missing and one had to be repaired. The tenant says they were working when she moved out.

The landlord filed an invoice from an electrical company dated May 30, 2014 for a variety of repairs including reactivate dismantled smoke detector, in the amount of $85.00. There was a second invoice dated August 12, 2014 for labour only for the installation of a smoke detector. The invoice for the purchase of the new smoke detector from Canadian Tire in the amount of $22.25 is dated August 11, 2014.

The condition inspection report dated March 30 says nothing about the smoke detectors. Of course, it is possible that damage occurred in the following month which is why I rely on the invoice for the repair in May. However, the invoices for the second smoke detector are dated three months after the new tenant moved into the unit. Based on the dates it is not possible to assume that this tenant, and not the new tenant, caused the damage. I award the landlords **$85.00** for this item.

Fuses and Light Bulbs

The landlords' submission said they were claiming for the labour of installing burned out or missing light bulbs and fuse but did not quantify the claim or provide any particulars. Accordingly, this claim is dismissed.

Cleaning

The tenant's evidence is that she cleaned but she did acknowledge that she did not clean under or behind the appliances, and she did not clean the vents or fans.

The landlords filed several invoices related to cleaning:

- May 20, 2014 – Canadian Tire - $37.98 – Cleaning supplies.
- May 30, 2014 – Independent Cleaning Person - $525.00 – The invoice says she cleaned the inside, outside, and underneath the fridge and stove, cleaned the dishwasher, hood and ceiling fan, cleaned inside and underneath washer and dryer, floors, kitchen cupboards, patio and entrance.
- August 1, 2014 – Credit to the new tenant for cleaning the washer and dryer, and the dishwasher.
- August 15, 2014 – Landlord family member - $50.00 for cleaning floors and $25.00 for removing stains from floors.

I accept the tenant's evidence that she cleaned but I find, based upon her own testimony and the photographs filed by the parties, that she did not do everything required by tenants. I allow the invoices from Canadian Tire and the independent cleaning person in the total amount of **$562.98.**

The cleaner's invoice included cleaning the floors and the ceiling fan. I am only prepared to allow the landlords the cost of cleaning these items once, particularly since the cleaner's invoice is for after the painting (and therefore some of the messiest work) was completed.

Similarly, I am only prepared to award the cost of cleaning the dishwasher and washer and dryer once. Any additional cleaning done by the tenant was to bring the unit to her standard.

The invoices submitted by the family members are dated after they filed their application for dispute resolution, indeed some after the first day of hearing, and contain minimal detail. As a result, no award for cleaning based on those invoices will be allowed.

Landlords' Time

One family member claimed for time and travel on invoices dated June 30 and August 10 as follows:

- Contracting $225.00
- Pick-up and delivery – 9 hours @ $25.00/hour $225.00
- Travel – 273 km @ $.54/km $147.42
- Contracting – 21 hours @ $35.00/hour $745.00
- Total $1332.42

He explained that in many cases it was cheaper for him to pick up items for the rental unit then to pay the delivery fee.

Another family member claimed, in an invoice dated August 15, as follows:

- Pick-up and delivery – 9 round trips average 7.5 km @ $.54/km $36.45
- Labour – 9 trips X .5 hours X $14.00/hour $63.00
- Hauling – 3 trips to the dump – 8.0 km @ $.54/km $12.86
- Labour – 3 trips X .5 hours X $14.00/hour $22.68

There is no explanation as to what "contracting" represents especially as this family member claimed separately for any cleaning and repairs; and no breakdown as to when this work was done, or what was done on each occasion. This claim is dismissed in full.

With regard to the claims by both family members for picking up and delivering supplies, it is only the pick-up and delivery of supplies for repairs that have been allowed that could be awarded to the landlords. So, for example, no claim for painting was allows so neither would any time or expense incurred in picking up painting supplies be allowed. There is not enough evidence to make any determination as to what, if any, of these claims are attached to claims that have been allowed.

There was absolutely no evidence that the tenant left large quantities of garbage or debris at the rental unit so the claim for three trips to the dump is a mystery. This claim is denied.

Yard Repairs

As part of its' itemized list of claims the landlords included an invoice from Buckerfields dated June 4, 2014 for $69.38. This was for garden materials. The landlord filed photographs of the yard. It looked fine. This claim is not allowed.

Part of the landlords' addition to its' claim was for a refund of the credit given to the tenant for yard maintenance throughout the course of this tenancy. The landlords claim the full amount of the discount given - $2400.00 calculated at $50.00 per month for 48 months because they say the tenant did not maintain the yard.

The landlords also claimed $889.70 for amounts said to be paid to a landscaping company in May, August, October and November 2010 for yard maintenance done because the tenant did not. The landlord said invoices from then until now could be made available.

On March 3, 2011, the landlord wrote the tenant about those invoices. The letter stated (in part):

> "We would consider an offer from you to make payment or in lieu perform other work at the property. How would you like to make arrangement to pay for your . . .landscaping services?
>
> We understand that you have indicated that you will take care of the yard and grass in 2011 and there will be no need for professional services. This is a reminder that you will be responsible for up to $600.00 in yard maintenance fees if the grass is not cut and the yard maintained."

The landlord says the tenant refused to pay this amount; the tenant says the bills are from 2010. There does not appear to have been any other action taken by the landlords on this issue.

First of all, the landlords cannot claim both the credit given for yard maintenance and the cost of the maintenance the credit is supposed to cover.

Secondly, arbitrators make decisions based on the evidence that is placed before them by the parties. It is up to the parties to prepare and file their evidence before making any claim.

This claim is dismissed for the following reasons:

- In the photographs filed by the landlord the condition of the yard is acceptable.
- There is no evidence that the landlord had to have a landscape company do anything in 2011, 2012, 2013, or the first part of 2014.
- By not doing anything to enforce any claim they may have had the landlords have created the impression that they acquiesced to the current arrangement and are therefore estopped from making a months and years after the event.

Finally, the landlords submitted an invoice for grass cutting dated May 27, 2014. This is after the new tenancy started and has nothing to do with this tenancy.

August 2010 Rent

The landlord says the tenant asked them not to deposit her August 1, 2010 rent cheque in the amount of $875.00. Later that month she paid $475.00 towards that month's rent but never paid the balance of $400.00. The landlords never took any action such as serving a 10 Day Notice to End Tenancy for Non-Payment of Rent or sending a reminder or demand letter. The landlord says they trusted the tenant to pay the

outstanding amount. The tenant says she does not remember anything about this cheque.

Other than a copy of the cheque itself the landlords filed no other evidence in support of this claim such as a copy of a ledger, a receipt for the partial payment showing a balance owing, or any request or demand for payment of the balance. All the landlords' evidence establishes is that the cheque was not deposited; not that the rent for that month was not paid.

Breach of Agreement

In its last evidence package the landlord added a claim for breach of agreement. Although the overall amount of the landlords' claim was more the amount claimed for this specific head of damages was never quantified.

The basis of the landlords' claim is that contrary to the tenancy agreement the tenant smoked in the unit; allowed pets in the unit' and sublet part of the unit twice. The landlord says he became aware of these breaches during the tenancy. They never attempted to end the tenancy for breach of a material term. The tenant says no one smoked and the dog was only there once.

The landlord argues that the tenant is responsible for any damage caused as a result of the smoking or the presence of pets. That is a true statement of the law. The landlords have been awarded the cost of replacing the carpet and cleaning and sanitizing the unit. The invoices from the paint company did not include any charges for products that are used to paint over smoke filled walls. Other than stating that the new tenant complains of odors the landlords did not lead any evidence that establishes that any other damages, beyond what they have already been compensated for, was caused by pet, smoking or sub-tenants.

Tenant's Refusal of Entry

The landlords say that throughout the tenancy the tenant either refused entry by the landlord, repair people or inspectors, or made entry very difficult. A particular circumstance was when the landlord was attempting to arrange a refinancing and the tenant would not allow entry by an inspector. The landlord says that because entry was denied so was the refinancing.

The legislation allows a landlord to enter a rental unit for the purposes of repairs or maintenance inspections. It also allows landlords to conduct a routine inspection once per month. The legislation does require landlords to give advance written notice of entry but if a landlord has complied with the notice requirements (the particulars of

which are not set out in this decision but which are available from the Residential Tenancy Branch public information) a landlord or its agent may enter a rental unit without the tenant's consent or presence.

The tenant is not responsible for any losses the landlords may have suffered as a result of now knowing or enforcing its rights under the legislation.

Lost Rent for May
Pursuant to section 37(1) the tenant should have been out of the rental unit by 1:0 pm on April 30. She did not give up possession until sometime on May 1 when she returned the key. Pursuant to section 57(3) the landlords are entitled to overholding rent in the amount of **$30.00.**

If a rental unit is left unrentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The tenancy agreement with the new tenant was singed on May 12, 2014 with the tenancy to start on May 15. All of the invoices for cleaning and repairs are dated from May 14 onwards. Not doing anything for two weeks is not starting in a timely manner. Further there does not appear to be any correlation between getting the place cleaned up and repaired and the new tenant taking possession. She agreed to accept the unit and moved in before any of the work was done. Accordingly, the landlords' claim for loss of rental income and hydro expense for the period May 2 to May 14 is dismissed.

Security Deposit
Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

The landlords' submission focused on the document they sent to the tenant setting out their claim against the security deposit. That is not compliance with section 38(1). The section requires a landlord to file an application for dispute resolution with the Residential Tenancy Branch claiming against the deposit, not just send a demand to the tenant.

The landlord had the tenant's forwarding address on March 30 and the tenancy ended May 1. The landlords filed their application for dispute resolution on August 5, well after the fifteen day time limit had passed.

Accordingly, I find that the tenant is entitled to an order that the landlords pay her the sum of **$870.00**, representing double the security deposit.

Filing Fees

As both parties have been at least partially successful on their respective applications no order for reimbursement of the filing fees from the other side will be made.

Set Off

I have found that the tenant must pay the landlords the sum of **$1799.86** and that the landlords must pay the tenant the sum of **$870.00.** Setting one amount off against the other I grant the landlords a monetary order pursuant to section 67 in the amount of **$929.86.**

Conclusion

A monetary order has been granted to the landlords. If necessary, this order may be filed in the 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: September 25, 2014

Residential Tenancy Branch