Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with cross applications. The landlords applied for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants applied for compensation equivalent to two month's rent on the basis the rental unit was not used for the reason stated on the *2 Month Notice to End Tenancy for Landlord's Use of Property*.

Preliminary and Procedural Matters

This hearing took place over three dates. At the originally scheduled hearing both parties appeared; however, I determined there were issues with respect to service of hearing documents. Neither party served their Application for Dispute Resolution upon the other party in a manner that complies with the Act; however, the parties before me confirmed that they had received the Application for Dispute Resolution of the other party and the female tenant who was not in attendance had provided a written submission in response to the landlord's claims. Therefore, I deemed the parties sufficiently served with the other parties' Application for Dispute Resolution pursuant to the authority afforded me under section 71 of the Act. With respect to service of evidence, the tenant denied receiving the landlord's evidence package. Although the landlords' legal counsel stated the evidence package was placed in the mailbox at the tenant's current residence, the tenant explained that the mailbox is a communal mailbox that multiple tenants use. Although the landlords' legal counsel was skeptical about the tenant's submission, with a view to fairness, I adjourned the hearing and gave instructions to the parties with respect to service of evidence and I also granted the landlords' legal counsel's request to permit submission of additional evidence. The parties were given instructions as to service of evidence upon each other during the period of adjournment.

At the reconvened hearing of August 14, 2014 both parties appeared or were represented and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, with respect to the landlord's application. Due to time constraints, the hearing was adjourned again so that the tenants' Application could be heard. Notices of Adjourned Hearing were sent to each party by the Branch using the addresses they had provided to me at the original hearing date.

The tenants failed to appear on third hearing date and since the landlords had appeared and were prepared to deal with the tenants' Application, I dismissed the tenants' Application without leave. Accordingly, the remainder of this decision deals with the landlords' Application only.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenants in the amounts claimed?
2. Are the landlords authorized to retain the tenants' security deposit?

Background and Evidence

This month-to-month tenancy commenced December 15, 2011 and the tenants paid a security deposit of $600.00. The tenants were required to pay rent of $1,200.00 on the 15th day of every month. The landlords did not prepare a move-in or move-out inspection report.

The rental unit was the main floor of a house with a basement suite below. During the tenancy, the basement suite was tenanted or vacant.

The parties had participated in numerous dispute resolution proceedings that dealt with the enforceability of multiple 2 Month Notices to End Tenancy for Landlord's Use of Property served upon the tenants. The most recent proceeding was a review hearing held on November 5, 2013. As a result of that review hearing, the Arbitrator provided the landlords with an Order of Possession effective November 15, 2013. The tenants petitioned the Supreme Court for a Judicial Review. Legal counsel for each party appeared before the Supreme Court to advise that the parties had agreed to settle the matter by mutual consent. The Supreme Court issued the following order that was consented to as to form and content:

1. **The Petitioners will move out from the premises [rental unit address] by March 15, 2014.**
2. The Petitioners will allow the Respondents to show the premises upon 24 hours written notice.
3. The Petitioners will cooperate with the Landlord to repair the bathroom leak and will allow him, and any contractor hired by him, access to the premises on 24 hours notice in the order to do the necessary work.
4. The Petitioners will pay 100% of the power and heating costs unless and until tenants move into the premises downstairs at which time they will pay 50%.
5. **This order is made as a result of the parties' consent and not upon the merits of the case or the grounds advanced or the positions taken by the parties in the prior proceedings before the Residential Tenancies Branch.**
6. The parties will bear their own costs.

[Reproduced as written except for my emphasis and omission of rental unit address]

It was apparent from the start of this proceeding that this was a very acrimonious relationship and the parties were rarely in agreement. Although I heard a considerable amount of submissions and testimony from the parties, I have summarized the parties' respective positions below with a view to brevity.

Unpaid Rent and Utilities

It was undisputed that the tenants did not pay rent on February 15, 2014 and vacated the rental unit on March 1, 2014.

The landlords seek to recover unpaid rent for the period of February 15, 2014 through to March 15, 2014. The landlord testified that the rental unit was re-rented starting May 1, 2014 after renovating the property.

The tenant testified that in February 2014 the tenant telephoned the landlord to give him verbal notice that they had found another place to live and would be moving out on March 1, 2014. According to the tenant, the landlord's response was that the sooner the tenants moved out the better. The tenant submitted that the landlord agreed to accept the security deposit for rent for the period of February 15 – March 1, 2014. The landlords denied that they agreed to accept the security deposit in lieu of rent for February 15, 2014 to March 1, 2014.

The tenant testified that rent was paid for every month except the last month but that the tenants were never compensated one month's rent for receiving the 2 Month Notice. At

the third hearing date, the landlord testified that the tenants had been compensated one month of free rent in “July or August, when I gave them the 2 Month Notice”. I noted that the subject Notice was dated July 14, 2013. The landlords’ legal counsel submitted that the requirement to compensate the tenants for receiving the 2 Month Notice was moot as the parties ended the tenancy pursuant to the consent order.

In addition to unpaid rent, the landlords seek to recover $238.58 for one-half of gas bill and hydro bills. The landlords produced a gas bill dated February 19, 2014 in the amount of $216.55 and a hydro bill dated March 18, 2014 in the amount of $260.59. The tenant testified that he had reluctantly agreed to pay for utilities by way of the consent order so as to “move on with the dispute”. Nevertheless, the tenant testified that all utility bills presented to them by the landlords were paid in cash. The tenant further testified that he was unaware of the last bills until the landlord included them with this claim.

Damage claim

Blinds - $550.00
The landlords seek $550.00 to replace three blinds in the living room and bedroom that were allegedly damaged by the tenant’s dog. The landlord provided an invoice dated March 15, 2014 in the amount of $550.00 for three vertical blinds. I noted that the landlords did not provide any photographs of the damaged blinds. The landlords described the damage as being “chewed” and “ripped up”.

The tenant denied having a dog in the rental unit and claimed the blinds supplied with the rental unit were very old and looked bad from the start of the tenancy but that the landlords rented the unit to them “as is” because of the low rent.

The landlords were asked about the age of the blinds that were replaced to which the landlord testified they were “a couple of years old” and “I don’t know how old”. The landlords were asked whether they could produce receipts to show when the replaced blinds had been purchased. The landlords testified that they disposed of the receipts.

Flooring in bedrooms - $945.00
The landlords seek $945.00 for new flooring in two bedrooms. The landlords submitted that at the start of the tenancy the bedrooms had carpet that was “a couple of years old” but that at the end of the tenancy the carpets were so filthy and stained, from the tenant’s dog, that they needed replacement. The landlord provided an invoice dated April 5, 2014 for installation of laminate floor at a cost of $945.00. The landlords also provided photographs of stained carpeting.

The tenant denied having a pet in the unit. The tenant testified that the carpeting provided to them at the start of the tenancy was ugly and dirty and the tenants had asked the landlord to replace the carpeting during the tenancy. Despite having carpeting on hand the landlord would not install it. According to the tenant, the landlord refused to replace the carpeting because of the cheap rent.

The landlords were asked whether they could produce a receipt or invoice to show the age of the carpeting in the bedrooms. The landlord claimed he had disposed of the receipt.

Range hood and stove damage - $274.39
The landlords submitted that during the tenancy the tenants had a fire on the stove top which damaged the stove elements, the range hood and scorched the cabinets and backsplash. The landlords seek to recover $181.43 for a new range hood and $92.96 for replacement of two stove elements. The landlords provided receipts in support of these claims, dated March 25, 2014. The landlords also provided photographs of the stove top, range hood and area around the stove.

The tenant denied that there was a fire on the stove during the tenancy and suggested the damage may have been caused after the tenants vacated. The tenant also indicated the appliances were damaged at the start of the tenancy and there was pre-existing smoke damage on the ceiling of the kitchen.

The landlord pointed to a statutory declaration of two of the basement suite tenants who declared that in late February 2014 they heard the fire alarm in the rental unit between 10:00 and 11:00 p.m. and that one of them had called the landlord about the alarm. The basement suite tenants declare that upon arrival at the property the landlord knocked on the door of the rental unit and “the male tenant answered the door and said there was no problem and that he had been frying fish and the smoke had set the alarm off”. The basement suite tenants further declared that “the landlord asked to come in but the upstairs tenant refused to allow him in.” The basement suite tenants also declared that they viewed the upper suite just after the tenants moved out since it was a larger unit that they were considering to rent and they observed the fire damage in the kitchen.

The male landlord also provided a statutory declaration; however, it contained contradictions as to when the landlord gained entry into the rental unit. At paragraph 7. the landlord declares: “Between March 1, 2014 and May 1, 2014, I worked daily on the

cleaning and repair of the upstairs unit…" yet at paragraph 11. the landlord declares "Some time went by before a set of keys was returned to me and I entered the suite."

Garbage disposal - $13.00
The landlords seek to recover $13.00 for dump fees. The receipt provided indicates that 120 Kg of refuse was dumped on March 23, 2014. The landlords submitted that the tenants left garbage bags at the property. The landlord provided a photograph of two small boxes and a medium sized plastic bin in support of this claim. The landlord testified that the items taken to the dump did not include the carpeting that was removed from the rental unit.

The tenant testified there was debris under the deck belonging to other tenants or the landlord and that the landlord was at the property all of the time. The tenant submitted that the refuse was likely the landlords' renovation debris.

Loss of Rent - $1,800.00
During the hearing, the landlords' legal counsel requested the Application be increased to permit a claim for loss of rent for the period of March 15, 2014 through to May 1, 2014 on the basis it was un-rentable because of damage caused by the tenants.

The tenant had submitted that the rental unit was in need of renovation prior to their tenancy and that the reason given for ending the tenancy was that the landlord wanted to end the tenancy to renovate the unit so the landlords' son could move in. The tenant also denied damaging the unit as claimed by the landlords.

The female tenant had submitted by way of her written submission that the rental unit was re-rented starting April 1, 2014.

Analysis

Upon careful consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the landlords have the burden of proof. Upon hearing from both parties, I found the submissions of both parties to be lacking credibility for reasons described below.

Credibility

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

Submissions that cause me to find the landlords lack credibility include:

1. The landlord testified that he had given the tenants one free month of rent in "July or August when I gave them the 2 Month Notice." The Act provides that a tenant may withhold the rent for their last month of tenancy where a landlord has served them with a 2 Month Notice. The 2 Month Notice had an effective date of September 14, 2013 and it was under dispute as were all previous Notices to End Tenancy. Therefore, I found it highly unlikely the landlords permitted the tenants to withhold rent for July 2013 in those circumstances.

2. The landlords testified that the carpeting and blinds provided to the tenants were only a “couple of years old” but when that position was challenged and the landlords were asked if receipts were available the landlord responded by stating the receipts were thrown away. Most landlords keep the receipts related to rental properties for income tax purposes especially when the purchase took place in the last few years. I also noted the landlord did not offer to obtain duplicate receipts from the merchant. Therefore, I found the landlords’ position that these items were relatively new and the receipts were thrown away to be highly unlikely.
3. The landlord provided inconsistent statements in his statutory declaration as to when he gained access to the rental unit after the tenants moved out as described in the Background and Evidence section of this decision.

Submissions that cause me to find the tenants lack credibility include:

1. The female tenant submitted in writing that the tenants gave the landlord two months of advance notice that they were moving out which would mean notice was given January 1, 2014 at the latest; whereas, the male tenant testified that notice was given on February 12, 2014.
2. The tenant testified that he had instructed the process server during a telephone call to leave the hearing package for him at the door of his residence; however, the process server swore an Affidavit of Service describing the male tenant as saying over the telephone that he would not accept the documents and then the tenant hung up the phone.

Given the highly acrimonious relationship between the parties and their lack of credibility I have for the most part given their verbal testimony little weight without other corroborating evidence.

Unpaid Rent and Utilities

Under the Act, a tenancy ends pursuant to one of the ways provided under section 44. The ways to end a tenancy under section 44 include, but are not limited to the following: a tenant’s written notice to end tenancy; a landlord’s written notice to end tenancy; by way of a mutual agreement of the parties, in writing; when a tenant vacates or abandons the rental unit; and, as ordered by the Director.

It was undisputed that the tenants did not give a written notice to end tenancy. The landlords had served the tenants with a 2 Month Notice to End Tenancy for Landlord’s Use of Property; however, the landlords’ legal counsel put forth the argument that the

tenancy did not end pursuant that Notice and pointed to the consent order as the way the tenancy ended.

Where parties elect to end a tenancy by mutual agreement, the written document should clearly indicate the date the tenancy will end. Unfortunately, I found the consent order that the landlords rely upon in their submissions does not have a clear effective date as to when the tenancy would end, as described below.

The Residential Tenancy Branch provides a document for parties to use to end a tenancy by way of a mutual agreement. Although its use is not mandatory, it provides an example of the information that should be contained in a mutual agreement to end tenancy.

The *Mutual Agreement to End A Tenancy* document produced by the Branch provides space for the parties to complete and agree to the following information, in part:

> The tenant(s) hereby agrees to vacate the above-named premises/site at: [time] on the day of [date].
>
> The parties recognize that the tenancy agreement between them will legally terminate and come to an end at this time.

By way of their Application for Dispute Resolution, the landlords had submitted that the tenants were required by the Supreme Court order to vacate “on” March 15, 2014. Had the order stated that I find this dispute would have been easily resolved; however, I find the court order does not reflect that. Rather, the court order provides that the tenants would move out “by” March 15, 2014. The meanings of the words “on” and “by” are not the same. Since the court order uses the word “by” I interpret that to mean the tenants could also vacate the property earlier than March 15, 2014 and be in compliance with the consent order. Unfortunately, the consent order does not stipulate when the tenancy would end, only when occupation of the rental unit would be relinquished up by the tenants. Further, the consent agreement is silent with respect to any obligation for the tenants to pay rent until a specific date or event or to give the landlord notice if they were to move out sooner than March 15, 2014.

Given the ambiguity of the consent agreement, and considering the ways a tenancy ends under section 44 of the Act, I find it fair and appropriate in these circumstances to order the tenancy ended effective the date the tenants vacated the rental unit: March 1, 2014. As such, I find the landlords entitled to rent up to that date. Further, the tenants are denied any offsetting compensation provided under section 51 of the Act for

receiving a 2 Month Notice and the landlords are denied rent for the days following March 1, 2014. Any claim for loss of rent due to the condition of the rental unit shall be addressed as part of the landlords' damage claim against the tenants.

With respect to utilities, I find it likely that the tenants did not pay the last gas bill since it was issued on February 19, 2014 and the tenants did not pay rent on February 15, 2014. Therefore, I grant the landlords' request to recover one-half of this bill or $108.28.

Considering the hydro bill was received after the tenants moved out I also find it likely that the tenants did not pay this bill. This bill is for the dates of January 26, 2014 to March 14, 2014. Since I have ordered the tenancy ended as of March 1, 2014 and the landlord was in possession of the property after March 1, 2014 I find the tenants obligated to pay for hydro for the period of January 26, 2014 through to March 1, 2014. Accordingly, I award the landlords hydro based upon pro-ration of this bill calculated as follows: $260.59 x 44/58 days x 50% = $98.84.

Damage claim

Awards for damages are intended to be restorative. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the item that has been replaced. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Blinds

The age and condition of the blinds at the start of the tenancy was in dispute. The landlords did not prepare a condition inspection report at the start of the tenancy or provide me any photographs of the blinds before, during or after the tenancy. I also reject the landlord's verbal testimony that the blinds were only a couple of years old without other evidence to support that position. As I uncertain as to whether the blinds were damaged during this tenancy or the age of the blinds I find the landlords have not met their burden to prove the tenants are responsible for 100% of the replacement cost and I dismiss this portion of their claim.

Flooring in bedrooms

The age and condition of the carpeting at the start of the tenancy was in dispute. The landlords did not prepare a condition inspection report at the start of the tenancy or provide me any photographs of the flooring before or during the tenancy. I also reject the landlord's verbal testimony that the carpeting was only a couple of years old without

other evidence to support that position. As I uncertain as to whether the carpeting was damaged during this tenancy or the age of the carpeting I find the landlords have not met their burden to prove the tenants are responsible for 100% of the replacement flooring cost and I dismiss this portion of their claim.

Damage to range hood and stove

I find it unlikely that the landlords would damage the range hood or two elements on the stove top and considering the statutory declarations of the basement suite tenants I find, on the balance of probabilities, this damage was caused during the tenancy. I grant the landlords' request for compensation for the new range hood and stove elements less depreciation. Although the age of these items is uncertain, the range hood looks to be relatively modern in the photographs thus, considering the tenancy was 1.5 years in duration I estimate the depreciation at 1/3. Therefore, I grant the landlords an award equivalent to 2/3 of the replacement costs of the range hood and elements, or $182.93.

Garbage disposal

The landlords put forth a submissions that the tenants are responsible for disposal of 120 Kg of garbage and that this did not include disposal of the carpeting. Yet, the landlords provided a photograph depicting very little garbage that appears to be much less than 120 Kg. Given the tenant pointed to the landlords' debris on the property as being the likely source of the garbage and the very little garbage demonstrated by the landlords' photograph, I find the landlords did not meet their burden to prove the tenants are responsible for paying for this garbage disposal cost. Therefore, I dismiss this portion of the landlords' claim.

Loss of rent

The tenant had asserted in her written submission that the landlords re-rented the unit as of April 1, 2014. The landlords asserted that it was re-rented May 1, 2014 but the landlords did not produce a copy of the tenancy agreement to substantiate that position with corroborating evidence. In any event, the landlords had claimed loss of rent on the basis the tenants damaged the rental unit; however, I have already found that the landlords failed to prove the tenants damaged the rental unit except for the range hood and 2 stove elements. While I accept the landlord installed new flooring and blinds in the rental unit I find it just as likely this was due to the age or pre-existing condition of these items. Therefore, I deny the landlord's request for loss of rent until May 1, 2014.

Filing fee, security deposit and Monetary Order

As the landlords were partially successful in this Application, I award the landlords one-half of the filing fee they paid for their Application, or $25.00.

I also authorize the landlords to retain the security deposit in partial satisfaction of the amounts awarded to the landlords.

In light of the above, I provide the landlords with a Monetary Order calculated as follows:

Unpaid Rent: February 15 – March 1, 2014	$600.00
Utilities – gas	108.28
Utilities – hydro	98.84
Damage to range hood and stove	182.93
Filing fee (one-half)	25.00
Less: security deposit	(600.00)
Monetary Order	$415.05

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The tenants' application was dismissed.

The landlords were partially successful with their Application. The landlords have been authorized to retain the tenants' security deposit in partial satisfaction of the amounts awarded and have been provided a Monetary Order for the balance of $415.05 to serve and enforce as necessary.

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: November 20, 2014

Residential Tenancy Branch