



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

The tenants applied requesting compensation for damage or loss under the Act, the cost of emergency repairs, return of double the security deposit and to recover the filing fee cost.

The landlord applied requesting compensation for damage or loss, to retain the security deposit and to recover the filing fee costs from the tenants.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

Preliminary Matters

At the start of the hearing I declined to consider the landlords' claim for vehicle detailing. The landlord had used a personal vehicle for hauling items, it became dirty and the landlord claimed the cost of cleaning the vehicle. I explained that this type of loss was not the direct result of a breach of the Act and that jurisdiction was declined.

The landlord confirmed that landlord R.R. did not accept the registered mail sent by the tenants, containing the hearing documents and evidence. The tenants supplied Canada Post registered mail receipts indicating the mail was sent on September 18, 2016. The landlord said that R.R. did not intend to come to the hearing.

Pursuant to section 90 of the Act, I find that landlord R.R. was served with Notice of the tenants' hearing and the evidence supplied by the tenants on the fifth day after mailing.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$224.25 for a kitchen faucet and \$44.79 for a shower head?

Are the tenants entitled to return of double the \$450.00 security deposit?

Is the landlord entitled to compensation in the sum of \$1,070.51?

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

Background and Evidence

This month-to-month tenancy commenced on July 14, 2014. Rent in the sum of \$900.00 was due on the first day of each month. A security deposit of \$450.00 was paid. A copy of the tenancy agreement was supplied as evidence.

The parties agreed that a move-in condition inspection report was not completed.

There was no dispute that the tenancy ended effective July 1, 2015 as the result of verbal notice given at the end of May 2015. A move-out inspection was not scheduled or completed by the landlord.

The landlord confirmed that the tenants gave their written forwarding address on July 2, 2015, by leaving a letter in the landlords' mail slot. The landlord did not return the deposit and made a claim against the deposit on October 21, 2015.

The landlord has made the following claim for compensation:

Truck rental 2 days plus fuel	\$200.00
Removal of OSB wood debris	113.33
Cutting and splitting wood	157.50
Light bulbs	27.68
Reimbursement to new tenant	100.00
Cleaning by landlord 10 hours X \$40.00	400.00
Cleaning – landlords' daughter 6 hours X \$12.00	72.00
TOTAL	\$1070.51

The landlord supplied 18 photographs that were taken at the end of the tenancy. The photos showed items left in the garage, such as pieces of lumber, some metal, a broom, hockey stick, cleaning supplies, planter, cardboard and one full sheet and nine small pieces of OSB.

Photos showed a metal and wood stand at the side of the home; several buckets in the yard, fire wood piled in a shed, some old cardboard, sections of a maple tree, a small

pile of firewood on the ground, dirt behind appliances, and on several window sills, on a wall and a baseboard, the side of the home and interior of the garage after items were removed and a dirty oven.

The landlord rented a truck from a friend to haul items to recycling, the landfill and to donation locations. The landlord submitted an invoice dated July 2015 for two days rental plus \$80.00 fuel, totaling \$200.00. When asked why it took two days to haul the few items shown in the photos the landlord said since they had to take items to multiple locations they had to keep the truck for two days.

The landlord submitted an undated invoice totaling \$340.00 for 10 hours work and three truckloads, for wood disposal. The landlord has claimed one-third of this cost for removal of the pieces of OSB the tenants left in the garage. The landlord said that she knew the tenants were building a home and assumed the wood was from that project.

There was no dispute that the tenants left several sections of a large maple tree in the yard. The landlord submitted an October 14, 2015 invoice in the sum of \$157.50 for the cost of having the wood bucked and split.

The landlord said that the tenants did not replace burned out lightbulbs. The landlord supplied a July 7, 2015 receipt for items purchased totaling \$121.91 and has claimed \$27.68 for the lightbulbs. The landlord said there had been comments made about the home having some sort of electrical problem but the tenants had not replaced bulbs.

The landlord was at the rental unit at 6:00 p.m. on July 1, 2015 and the tenants were still in the process of moving. The landlord asked the tenants to be sure the home was cleaned and she was told it would be. A new tenant was to move into the unit the next day. On July 2, 2015 the new tenant sent the landlord some photos taken of inside the house. The home was not clean; the stove and oven were dirty.

The landlord submitted a typed, unsigned statement said to have been issued by the tenant who moved in to the unit on July 2, 2015. This person submits that he did not need to move in on July 1 and when he returned to the unit on July 2, 2015 he found it was not clean and a mess was left behind. The areas under appliances were not clean, the dryer was full of lint and the outside of the washer was dirty. A window sill and wall were in need of cleaning and bulbs were burned out. The new tenant mentions debris left in the yard and garage. The new tenant acknowledges he was given a \$100.00 rent reduction for the inconvenience caused while the landlord brought the unit up to an acceptable standard. The landlord has claimed the cost of compensation given to the new tenant as a result of the tenants' failure to clean the unit, resulting in a delay in occupancy.

An unsigned note from the "previous renters" of the unit; one of whom has the same last name as landlord R.R., state that the unit was clean when they vacated and that no debris was left behind.

The landlord has claimed a total of \$472.00 for 16 hours of cleaning by the landlord and their daughter. The landlord said that after the tenants vacated she called the tenants and was told that they were not required to complete a "deep clean."

The tenants said that when they moved into the unit an inspection was not completed and no agreement was reached on the state of the unit. The tenants said they spent four days cleaning the garage which was full of old wood, paint and garbage. The tenants took six loads to the dump. The items remaining in the garage were of some value and left for the landlord. The OSB was there at the start of the tenancy. The landlords' picture of a clean garage does not reflect the state of the garage at the start of their tenancy; the tenants said the garage was disgusting when they moved in.

The male tenant said that he spoke to the landlord on July 27, 2015, offering to come to the property to cut the maple wood. The tenants on each side of the duplex use wood stoves, so the wood had some value to them. The landlord declined the offer to have the tenant cut up the wood. The landlord said that when the tenant had delivered a July 24, 2015 letter, attempting to settle matters, he was agitated; so she did not wish to have the tenant return to the rental property as he had made her nervous. The landlord then hired someone to cut the wood. The tenant said that after he delivered the July 27, 2015 letter there was no further contact between the parties.

In relation to the items shown in the landlords' photos, the tenants said none of those belonged to them. The canoe stand shown in the photo was removed by the tenants and is in their garage. The landlord said she put that stand by the road, for the tenants to remove.

The wood piled in the shed is part of a common shed used by tenants who reside in each side of the duplex. When the tenants left, the wood was not in such a messy state. The buckets were at the rental unit at the start of the tenancy.

When the landlord came to the unit at 6:00 p.m. on July 1, 2015 the new tenant was with her; neither raised any concerns about the state of the home. The landlord approved of the cleaning the tenants had done. It was not until after the tenants vacated that the landlord called and said it was not good enough. The landlord was upset the tenants had not cleaned under the appliances.

The male tenant said that the landlord did not leave enough time between tenants so that proper maintenance and cleaning beyond that the tenants were required to complete could be carried out. The tenant said that the landlord accepted rent but paid no attention to the home.

The tenants agreed that the oven was not cleaned at the end of the tenancy.

The tenants stated that there was an electrical issue in the home, bulbs would burn out quickly. One bulb in the kitchen was unusual and they could not locate a replacement;

the landlord had been notified. When the tenants left they replaced bulbs. The tenant thinks the landlord replaced all of the bulbs in the home after they vacated.

There was no dispute that the landlord had a plumber install a new shower head in the bathroom. The bathroom had been repaired prior to the tenancy. The tenants said the old shower head did not function properly so they purchased a new shower head. The tenants have claimed the cost of the shower head. A list of purchases made at a major retail outlet recorded the purchase of a Waterpik Powerspray in the sum of \$39.99. The tenant said they have also claimed taxes that were paid.

The tenants purchased a new kitchen faucet as the faucet was leaking. The tenants said this was an emergency repair and as the landlord was out of the country at the time they installed the faucet. The tenants have charged \$84.00 for labour and tax, to install the faucet. The faucet cost \$140.25; a September 18, 2014 invoice was supplied as evidence.

The landlord said she did not approve installation of the faucet by the tenants and could have had someone else install the faucet.

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 and proof that the party took all reasonable measures to mitigate their loss.

In relation to the security deposit Section 38(5) of the Act provides:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(Emphasis added)

Pursuant to section 24(2) of the Act, I find that the landlords' right to claim against the deposit was extinguished. The landlord must arrange a move-in condition inspection report and when the landlord failed to do so at the start of the tenancy the landlord extinguished the right to claim against the deposit for damages.

Section 38(4) of the Act allows a landlord to retain the deposit if the tenant agrees in writing at the end of the tenancy or an Order is issued allowing the landlord to retain the deposit. Neither situation occurred in this instance.

I find that the landlord received the tenants' written forwarding address no later than July 5, 2015; three days after it was left in the landlords' mail box. When the landlord

received the tenant's written forwarding address, as provided by section 38(1) of the Act, the landlord was required to return the deposit, in full within 15 days.

As the landlord extinguished the right to claim against the security deposit I find that no later than July 20, 2015, the landlord was required to return the deposit to the tenants. The landlord was at liberty to submit a claim against the tenants, but was not entitled to claim against the deposit; that right was extinguished at the start of the tenancy. The landlord has confirmed that there is no claim outside of damage to the rental unit.

Therefore, I find, pursuant to section 38(6) of the act that the landlord is holding a security deposit in the sum of \$900.00.

In relation to the costs claimed by the landlord for truck rental and removal of items from the property and light bulbs, I find that the landlord has failed to prove the state of the unit at the start and end of the tenancy. In the absence of a move-in condition inspection report the landlord has the burden of proving the items left in the unit belonged to the tenants. I found the tenants testimony believable; particularly in relation to the removal of items from the garage at the start of the tenancy. This leads me to find that there were items left in the garage before the tenants took possession.

From the evidence before me I find that it was just as likely there was an issue with the electrical service and that the tenants had not left burned out light bulbs at the end of the tenancy.

I gave the written statements said to be issued by the previous tenants and the new tenant no weight. Those statements were not signed and the individuals did not attend the hearing so they could be cross-examined. The tenants had the right to question those individuals and could not.

Therefore, I find that the claim for truck rental, removal of the OSB and lightbulbs is dismissed.

As the tenant offered to return to the rental unit to cut the wood and that offer was rejected by the landlord I find that the claim for wood bucking and splitting is dismissed. The landlord was provided with an opportunity to mitigate the loss claimed. The tenant would have attended at the rental unit property where the landlord does not reside. I find that the landlords' submission that she did not wish contact with the tenant is not reasonable, as she would not have been at the property.

I find that any need to reduce rent for the new tenant falls to the landlord and the landlords' failure to ensure that inspections were completed and that the property was cleared of items left by previous tenants. The failure to comply with the requirements of the Act led to any issue the landlord had with the new tenant and any resulting cost cannot be assumed by the tenants. Therefore, I find that the claim for rent reduction given to the new tenant is dismissed.

As the tenants have acknowledged the oven required cleaning I find that the landlord is entitled to compensation in the sum of \$60.00, as a reasonable sum. I find that the

landlord is entitled to further \$60.00 for the cost of cleaning a wall in the bedroom, a window sill and under the appliances. I have based this finding on the photos provided that showed some need for cleaning.

Therefore, the landlord is entitled to the following compensation.

	Claimed	Accepted
Truck rental 2 days plus fuel	\$200.00	0
Removal of OSB wood debris	113.33	0
Cutting and splitting wood	157.50	0
Light bulbs	27.68	0
Reimbursement to new tenant	100.00	0
Cleaning by landlord 10 hours X \$40.00	400.00	120.00
Cleaning – landlords' daughter 6 hours X \$12.00	72.00	0
TOTAL	\$1070.51	120.00

I find, on the balance of probabilities that the landlord acknowledged the tenants had purchased a new shower head. The landlord had her plumber install the shower head. I find this action by the landlord supports the tenants' claim that the shower head was purchased to replace a faulty unit. Therefore, I find that the tenants are entitled to compensation in the sum of \$44.79 for purchase of the shower head.

I find that the kitchen faucet was purchased with the knowledge of the landlord and that it was required due to a failure of the faucet that was in place. Therefore, I find that the tenants are entitled to sum claimed for the cost of the faucet, \$140.25. I have dismissed the claim for labour as the landlord was aware of the leak and if she chose to allow the leak to continue, that was her prerogative. I find that a leaking faucet does not meet the standard of emergency repair. There was no evidence before me that the landlord had agreed to labour costs to the tenants.

As each application has some merit I find that the filing fee costs are set off against the other.

Pursuant to section 72 of the Act I find that the landlord may retain \$120.00 from the \$900.00 security deposit.

Based on these determinations I grant the tenants a monetary Order for the balance of \$780.00. 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.

Conclusion

Jurisdiction is declined on the claim made for the cost of detailing the landlords' vehicle.

The landlord is entitled to compensation in the sum of \$120.00; the balance of the claim is dismissed.

The tenants are entitled to return of double the \$450.00 security deposit, less \$120.00 owed to the landlord.

The tenants are entitled to costs for the shower head and faucet; the balance of the claim is dismissed.

Filing fees are set off against the other.

This decision is final and binding and 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: March 23, 2016

Residential Tenancy Branch