



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$6702 for unpaid utilities and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

A problem arose with respect to the service of evidence. In early August the Landlord served the Tenant with her package of evidence by posting. The Tenant testified the memory stick which contained the landlord's photos was not in the material. The Tenant's documents were served on the Landlord a short time later. However, the Landlord testified she could not open the digital material. The parties contacted each other about re-serving these documents but they were unable to make arrangements to do so. Neither party requested an adjournment. I determined it was appropriate given the nature of a residential tenancy arbitration to proceed with the hearing rather than adjourn the matter.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on April 6, 2016. I find that the Amended Application for Dispute Resolution was served on the Tenant by mailing, by registered mail to where the Tenant resides on August 4, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?

- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$950 plus ½ of the utilities per month payable in advance on the first day of each month. The tenant paid a security deposit of \$475 at the start of the tenancy.

In January 2016 the Tenant gave the landlord written notice to end the tenancy at the end of February 2016. She vacated the rental unit on February 23, 2016.

The landlord's claim has a number of problems including the following:

- She did not conduct a Condition Inspection at the start of the tenancy.
- The tenant was not involved in the Condition Inspection at the end of the tenancy.
- The Landlord filed an Application for Dispute Resolution on April 6, 2016 claiming \$1240. The Monetary Order Worksheet included the following claims
 - \$240 for paint and supplies and \$350 for labour for painting and repair.
 - \$350 for cleaning.
 - No claim made for the repair of floor.
- The Monetary Order worksheet accompanying the Amended Application for Dispute Resolution on August 2, 2016 increased the claim by more than \$5000 including the following:
 - \$310.91 for paint and supplies and \$1120 for labour (the work had been completed in March 2016).
 - \$1092 for the cost of cleaning based on an invoice dated March 15, 2016.
 - \$3145.77 based on a quotation dated March 1, 2016.
 - The documentary evidence relied on by the landlord is all dated before the date of her original application. The landlord did not provide an explanation as to the basis for the increase in her claim even though she had the materials prior to the date of the original application.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for

reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. The Monetary Order Worksheet dated August 2, 2016 identifies 7 claims based on 3 Fortis gas bills, 2 Fortis electric bills, and 2 City of Kelowna utility bills. The tenant acknowledged she owes ½ of the utility bills but disputed the amount. The parties agreed the tenant owes \$281.14 for her share of the utility bills.
- b. I dismissed the claim for the cost of the registered letter. That claim involves a disbursement claim for the cost of litigation. The only jurisdiction as arbitrator has dealing with costs is the cost of the filing fee.
- c. The landlord claimed \$310.91 for paint and supplies and \$1120 for repair and painting of walls for a total of \$1430.91. The Monetary Order worksheet claims for 32 hours @\$35 an hour. The previous monetary order worksheet filed a couple weeks after the work was completed claim \$350 based on 10 hours of work. I have reviewed the digital evidence of both sides. I am satisfied that the tenant caused some damage to the walls. However, the amount claimed is excessive and the evidence does not support this amount. I do not accept the testimony of the Landlord that it took her 32 hours to paint the rental unit. The landlord failed to provide an explanation as to why her Monetary Order Worksheet prepared 2 weeks after the work was done claimed 10 hours of work compared to the Monetary Order Worksheet filed 4 months later claimed 32 hours labour. Policy Guideline #40 provides that the expected life of a interior paint job is 4 years. The tenancy lasted 19 months. The landlord testified the walls were painted 9 months prior to the start of this tenancy. In the circumstances, after considering reasonable wear and tear and all of the evidence I determined the landlord is entitled to \$300 for the cost of painting.
- d. The landlord claimed the sum of \$1092 for the cost of cleaning. This claim is excessive and not supported by the evidence. I determined the landlord is entitled to \$250 for the cost of cleaning.
- e. I dismissed the claim for the cost of 2 memory sticks as that involves a cost of litigation. An arbitrator does not have the jurisdiction to make such an award.
- f. The landlord claimed the sum of \$3145.77 for the cost of refinishing the hardwood floor. The hardwood floor was 30 to 40 years of age. The landlord testified the floor had been previous covered by a carpet and blames the tenant's dogs. The tenant testified her dogs were only present in the rental unit about 12 to 15 times and denies she caused the damage. Policy Guideline #40 provides the expected life of a hardwood floor is 20 years. The landlord has not completed the work. I dismissed this claim as the landlord failed to prove that the damage was caused by the Tenant and that it is more than reasonable wear and tear.
- g. I dismissed the landlord's claim for the loss of ½ month rent. The tenant gave the landlord more than one month written notice. The lack of cleanliness and damage claim

are not so sufficient to prevent the renting of the rental unit. The tenant vacated the rental unit on February 23, 2016. The short video she took showed on that date indicated the rental unit was in a showable condition .

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$831.14 plus the \$100 filing fee for a total of \$931.14.

Security Deposit

I determined the security deposit plus interest totals the sum of \$475. I determined the landlord is entitled to retain this sum. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$456.14.

Conclusion

In summary I determined the landlord has established a monetary order against the tenant(s) in the sum of \$931.14. I ordered the landlord may retain the security deposit/pet deposit in the sum of \$475. In addition I ordered that the Tenant pay to the Landlord the sum of \$456.14.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 29, 2016

Residential Tenancy Branch