# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC, MND, FF**

Introduction

This was a cross-application hearing.

The tenants applied on March 29, 2016 requesting compensation in the sum of $2,760.06 for damage or loss under the Act and to recover the filing fee costs.

On May 24, 2016 the landlord applied requesting compensation in the sum of $3,478.00 for damage or loss and damage to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained 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

The parties agreed that the landlord continues to hold the security and pet deposits paid. The landlord said that the application included a claim against the deposits. After review of the landlords' application I determined that the landlord had not claimed against the deposits. The tenants stated that they did not object to the landlord amending the application to include a claim against the deposits. The landlord said he wanted to claim against the deposits.

Section 4.2 of the Rules of Procedure provides:

> ***4.2 Amending an application at the hearing***
>
> *In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.*

Therefore, based on the agreement of the parties I find that the landlords' application is amended to include a claim against the pet and security deposits paid. The parties were informed that the Act would be applied in relation to the disbursement of the deposits.

The tenants supplied digital evidence. The landlord confirmed receipt and that the evidence could be viewed. The landlord said that the audio recordings were obtained

illegally as the landlord was not aware he was being recorded. The landlord brought forward no evidence to support the claim that the recordings were illegally obtained.

On October 13, 2016 the tenants submitted 12 pages of evidence to the Residential Tenancy Branch (RTB.) The evidence was sent to the landlord by registered mail on October 13, 2016. The landlord said he has just returned from a trip and had not picked up the registered mail. As the evidence was not supplied at least 14 days prior to the hearing, and not received by the landlord, this evidence was set aside. The tenants were at liberty to make oral submissions.

Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of $2,760.00 for costs related to loss of use of laundry services and water damage?

Is the landlord entitled to compensation in the sum of $3,478.00 for the cost of repairs?

May the landlord retain the pet and security deposits or must the deposits be ordered returned to the tenants?

Background and Evidence

The tenancy commenced on August 1, 2015. A copy of the tenancy agreement supplied as evidence indicated that rent was $1,450.00 per month. There was agreement during the hearing that the tenants paid security and pet deposits in the sum of $725.00 and $300.00, respectively.

The tenants vacated the rental unit on May 14, 2016. A move-out condition inspection report was completed on May 15, 2016 and the tenants' forwarding address was provided on the report.

The tenants have made the following claim for compensation:

| | |
|---|---|
| Hydro – extra | $193.06 |
| Laundromat | 598.00 |
| Time – tenants | 570.00 |
| Cat food | 40.00 |
| Gas – travel to laundromat | 30.00 |
| Closet door – loss of use | 50.00 |
| Light bulbs | 25.00 |
| Cereal – damaged by leak | 10.00 |
| Blinds – loss of use | 50.00 |
| TOTAL | $1,566.06 |

I note that the sum included as a detailed calculation provided by the tenants differed from the sum on the application; $2,760.00.

The landlord has made the following claim for compensation:

| | |
|---|---|
| Duct cleaning and dryer vent repair | $450.50 |
| Air duct cleaning and dryer vent exhaust | 300.88 |
| Restoration costs July 4, 2016 | 1,255.44 |
| Restoration costs April 18, 2016 | 1,473.15 |
| TOTAL | $3,479.97 |

A copy of the move-in condition inspection report completed on July 31, 2015 was supplied as evidence. The unit was recorded as having a number of deficiencies. There was a notation made that the dryer was not working properly. In the section of the report that set out repairs to be made at the start of the tenancy; one of the repairs included the dryer. The notations made in relation to the dryer were then crossed out. Another notation was made that the "dryer tumbles and you feel heat however takes very long time to dry." This notation was initialed by the male tenant. The report indicated that blinds, light bulbs and closet door and screen keepers required repair or replacement. A notation indicated the unit needed painting.

The tenants said that the dryer never worked properly and despite repeated verbal requests for repair the landlord did nothing. The dryer took hours to dry a load and over the first three months of the tenancy used an excessive amount of hydro. On August 5 and 6, 2016 the tenants wrote letters to the landlord, requesting repair of items identified on the inspection report (closet door and rail, blind, dryer, bathroom lights, screen keepers.) The August 6, 2015 letter was written specially requesting repair to the dryer. A copy of the letters was supplied as evidence. The tenants wrote that the dryer would take up to six hours to dry a moderate load on full setting. The tenants gave the landlord a two week deadline to repair the dryer and until August 31, 2015 to make the other repairs. The repairs were never completed.

The tenants said the landlord responded that it was an old dryer; it was not repaired. The tenants' digital evidence details indicated that on August 6, 2016 the landlord had told them the tenants should pay to have someone check the dryer. After putting a towel in the dryer when the landlord was present they established the element was working. The landlord said that there was nothing wrong and that the vent was not a problem and was functioning properly. The tenants pointed out the dryer did not seem to be circulating air. Twenty minutes after putting the towel in the dryer it was checked to see if it was drying; it was not hot or dry. The landlord then told the tenants the dyer did not have a vent and denied that a vent was the issue.

The tenants said the landlord refused to repair the dryer and would not provide a service address. The tenancy agreement did not include a service address for the landlord.

There was no dispute that on November 16, 2015 the tenants discovered a leak that originated from the ceiling in the kitchen. The leak was immediately reported to the landlord. At this time the dryer was disconnected as it was discovered that the leak was

caused by moisture due to a clogged dryer vent. The laundry room was next to the kitchen. The venting ran into the ceiling of the kitchen.

The leak caused damage to cat food and cereal that was on top of the fridge.

In relation to the hydro usage claim, the tenants calculated the number of watts that a dryer should use and used the median running time and hydro fees. The tenants assumed a cost of $55.16 per month, based on a load of clothes each day; resulting in excessive hydro use in the sum of $193.06 during the time the dryer was used over 3.5 months.

The tenants have claimed the cost of using a laundromat from November 16, 2015 until the tenancy ended on May 15, 2016. During this time they did not have use of a dryer. The tenants found it easier to wash the clothes at the laundromat, rather than washing them at home and then taking wet clothes to the dryer at the laundromat.

The tenants calculated the cost at $2.50 per load of wash and $2.00 per dryer load, for a load each day over 19 weeks; totaling $598.00.

The tenants claimed the time they had to spend going to the laundromat at 1.5 hours each day, $10.00 per hour for 19 weeks, totaling $570.00.

The tenants claimed the cost of fuel used to take laundry to the laundromat.

A closet door that was to be repaired at the start of the tenancy was never repaired. The tenants claimed the cost of loss of value. The tenants claimed $50.00 for a loss of value.

The tenants had to replace light bulbs as some were burned out at the start of the tenancy. The move-in inspection report indicated four bulbs in the bathroom required replacement. The tenants claimed $25.00.

The blinds recorded as needing repair at the start of the tenancy were not repaired. The tenants claimed $50.00 for the loss of value.

The landlord stated that during the move-in inspection he sent a text to the prior tenant, asking if the dryer had worked. The previous tenant responded that the dryer did work. This is why the tenants' comments regarding the need for dryer repair were crossed off the report. The landlord said the dryer was older and would take longer to dry clothes.

The landlord said that the tenants were responsible for the leak that occurred in the ceiling as they allowed the dryer to become clogged with cat hair; the tenants had a cat. The landlord said that the damage was indirectly caused by the pet. When asked, the landlord confirmed that the previous tenant had a pet also.

The landlord submitted a copy of an email issued by a strata representative on April 26, 2016. The landlord said the strata managed the repairs to the ducts. The email indicated that the considerable lint, mixed with cat hair, had been removed from the dryer door, behind where the lint filter was located. Similar material was found in the flex duct connected to the dryer and within the drop ceiling and from the duct running through the ceiling. When the duct cleaners attended at the unit on a second occasion additional lint was removed from the duct at the joint in the ceiling of the laundry room.

On May 7, 2016 another email from the strata representative indicated that the restoration company had been to the unit twice and had attempted to clear the dryer blockage between the kitchen and dryer. On the first visit the restoration company did not have much success and during the second visit they restored some airflow as it appeared to be blocked again. They still could not fully restore the airflow. The strata had arranged repairs and the invoices were given to the landlord for payment.

The landlord supplied copies of four invoices:

- $450.50 - air duct cleaning, dryer vent repair February 25, 2016. This invoice had a hand-written note that indicated there had been a non-functioning dryer that caused the vent to clog and that the cost should be charged back to the unit;
- $300.88 – air duct cleaning to trouble shoot and clean dryer vent exhaust;
- $,473.15 - April 18, 2016 – restoration work in kitchen and laundry room, drywall work, painting, cleaning, moving appliances; and
- $1,255.44 – restoration, moving appliances, remove drywall, inspect, attempt to unclog dryer, partially clean vent, install dehumidifier, and fan.

The landlord believes the tenants used the dryer after it had been disconnected. The landlord stated that the strata representatives believe the tenants cased the damage due to improper use of the dryer.

The landlord submitted photographs showing the damage to the ceiling, large amounts of lint pulled from the duct and lint in the dryer door. The landlord said the tenants damaged the dryer lint screen and at one point had reported it was missing. The screen reappeared; the landlord had not delivered a new screen as he did not know the size of screen he needed to obtain.

The landlord provided a picture s a few items of clothing on a clothing rack as evidence the tenants did not use a laundromat. One photograph showed clothes in the washing machine; evidence the landlord says points to use of the washing machine during the time the tenants say they had to use the laundromat.

The landlord said the tenants have not supplied any evidence, such as receipts or invoices in support of their claim for laundry costs, cat food, cereal and light bulbs. The closet door does not slide well; the tenants just had to pull harder on the door to open it. The landlord said there was only a single light bulb in the bathroom that needed replacing. The landlord estimated the cost at $1.00.

The landlord said the blinds are working. There was a section of the blind that had been cut out of the patio blind by the previous tenant; this would not have affected the quality of life for the tenants.

The landlord said the tenants seemed to complain about everything and were hard to satisfy. The landlord said he cannot respond to every request made by tenants.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position

as if the damage or loss had not occurred. When considering a claim consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or the tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 of the Act sets out the landlord and tenant obligation to maintain and repair a rental unit

> ***32*** *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> > *(a) complies with the health, safety and housing standards required by law, and*
> >
> > *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
>
> *(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*
>
> *(3) A tenant of a rental unit 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.*
>
> *(4) A tenant is not required to make repairs for reasonable wear and tear.*
>
> *(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

The purpose of completing a condition inspection report is to establish any deficiencies that accurately reflect the state of the home at the start of the tenancy. I find the landlords' reliance on the previous tenants' assessment of the dryer was ill advised. The tenants identified the dryer as needing repair at the start of the tenancy. Pursuant to section 32 of the Act, the landlord had a responsibility to have the dryer inspected by a qualified technician. The landlord chose to ignore the requests for repair, made in writing on August 5 and 6, 2015. If the landlord had responded it is highly likely the leak would have been avoided as the clogged ducts would have been discovered.

The notation on the February 25, 2016 invoice appears to have been made by a strata council person. This was not referenced during the hearing but point to what I find was an assessment by the person who assigned costs to the landlord, that it was a problem with the dryer that caused the leak. Further, from the evidence before me it is reasonable to conclude, on the balance of probabilities, that the ducts were clogged at the time the tenants took possession of the rental unit. The tenant had noted the dryer was not working when the move-in inspection was completed. I find on the balance of probabilities that the subsequent leak and loss of the dryer service was due to the refusal of the landlord to respond appropriately to the tenants request for repair.

Therefore, I find that the tenants are not responsible for the costs claimed by the landlord and that the claim is dismissed.

I find that the tenants were left to use a dryer that was not functioning for a period of 3.5 months, during which time the dryer would run for hours before clothes would dry. Any reasonable person would accept that excess hydro usage would result. I found the calculation made by the tenants, based on wattage usage reasonable and that it supports the sum claimed. Therefore, I find that the tenants are entitled to compensation in the sum of $193.06 for excess hydro usage.

When the dryer was disconnected on November 16, 2015 the landlord was required to either have the repair made in a timely manner or to issue notice to the tenants that the service was being removed. The repairs was not completed during the tenancy, the dryer did not function again. When a service or facility is removed from a tenancy notice of removal, combined with a rent reduction representing the loss in value of the tenancy, must be issued. That did not occur.

Therefore, as the tenants lost the use of the dryer from November 16, 2015 to March 24, 2016 I find that the monthly rent reduction is $56.00 for each of those months. This includes the tenants' time and travel costs. Therefore, the tenants are entitled to compensation in the sum of $266.00. The balance of the claim for laundry service, travel and time is dismissed.

The claim for loss of use of the washing machine is dismissed. The washing machine remained functional.

In the absence of any effort by the landlord to make the repairs to the closet and blinds that were identified as needed at the start of the tenancy I find that the tenants are entitled the costs claimed for a loss of value of the tenancy.

In the absence of evidence of the purchase of cat food and cereal in the sum claimed I find the tenants are entitled to nominal compensation in the sum of $5.00 for each. I accept on the balance of probabilities that these items were on the fridge and damaged by the leak. I find that the tenants are entitled to the sum claim for light bulbs. The landlord confirmed he did not replace the bulbs and they were noted as burned out on the move-in inspection report.

Therefore, the tenants are entitled to the following compensation:

| | Claimed | Accepted |
|---|---|---|
| Hydro – extra | $193.06 | $193.06 |
| Laundromat | 598.00 | 266.00 |
| Time – tenants | 570.00 | 0 |
| Cat food | 40.00 | 5.00 |
| Gas – travel to laundromat | 30.00 | 0 |
| Closet door – loss of use | 50.00 | 50.00 |
| Light bulbs | 25.00 | 25.00 |
| Cereal – damaged by leak | 10.00 | 5.00 |
| Blinds – loss of use | 50.00 | 50.00 |
| TOTAL | $1,566.06 | $594.06 |

The balance of the tenants' claim is dismissed.

I have considered the value of the pet deposit. The landlord said that the dryer and leak were the result, partially, of damage caused by a pet. I have rejected that notion. Pet damage includes damage such as scratched floors, damaged wood work, urine stains and other obvious problems. A pet is not responsible for the state of a dryer.

Section 38(7) of the Act allows the landlord to retain a pet deposit only when an application related to damage caused by a pet has been made. As there was no realistic claim for damage caused by a pet I have applied section 38(1) and 38(6) of the Act. Once the landlord had the tenants' address on May 15, 2016 the landlord was required to return the pet deposit to the tenants within 15 days. As the landlord retained the pet deposit when there was no claim for damage caused by a pet I find that the landlord is holding double the value of the pet deposit paid; $600.00.

Residential Tenancy Branch policy suggests that an arbitrator will order return of any portion of a deposit when landlord has claimed against the deposit. As the landlords' claim has been dismissed I order the landlord, pursuant to section 65(1)(c of the Act to return the security deposit in the sum of $725.00 and pet deposit in the sum of $600.00.

As the tenants' application has merit I find, pursuant to section 72 of the Act that the tenants are entitled to recover the $100.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenants a monetary Order for the balance of $2,019.06**.** 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

The landlords' claim is dismissed.

The tenants are partially successful in their claim. A monetary order has been issued; the balance of the claim is dismissed.

The landlord is holding a pet deposit in the sum of $600.00.

The landlord is ordered to return the pet and security deposits totaling $1,325.00 to the tenants.

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: November 02, 2016

Residential Tenancy Branch