Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Black Lab Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MND MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on September 29, 2020. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the "*Act*").

Both parties attended the hearing and provided testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Landlord's application – Service

I find it important to note that during March 2020 (until June 24, 2020), the Director of the Residential Tenancy Branch made a directive to allow the service of evidence by email. This was a temporary measure in place to ensure physical distancing protocols were followed in the wake of the global COVID-19 pandemic.

Service provisions are typically laid out in section 88, 89 and 90 of the Act. Email service is not an approved method of service under the Act. However, some of these provisions have been modified, due to the pandemic, and the Director has issued practice directives. For example:

Personal (in-person) service of documents is not a valid method of service during this time to reduce potential transmission of COVID-19. To assist landlords and tenants work around this restriction, the Director of the Residential Tenancy Branch has issued a Director's Order to allow service by email during the state of emergency.

Emailed documents will be deemed received as follows:

- *If the document is emailed to an email address and the person confirms receipt by way of return email, it is deemed received on the date receipt is confirmed;*
- *If the document is emailed to an email address, and the person responds to the email without identifying an issue with the transmission, viewing the document, or understanding of the document, it is deemed received on the date the person responds.*
- *If the document is emailed to an email address from an email address that has been routinely used for correspondence about tenancy matters, it is deemed received three days after it was emailed.*

On June 5, 2020, the Tenant acknowledged getting an email from the Landlord. The Tenant acknowledged that this email contained the Notice of Hearing, which she was able to open. As such, I find the Tenant was sufficiently served with the Landlord's Notice of Hearing on June 5, 2020, the same day she received the email from the Landlord.

As part of this initial email, containing the Notice of Hearing, the Landlord sent a Google Drive weblink (containing their evidence). The Tenant stated she was unable to open the evidence and told the Landlord this via a return email almost immediately. The Landlord sent a second email later that same day, June 5, 2020, with all her evidence in PDF format, attached to the email. The Landlord sent 3 emails because of the number of documents. The Tenant acknowledged getting this second series of emails, and stated she immediately tried to open the files but could not.

The Landlord explained that, as part of this second series of emails containing the PDF documents, she asked the Tenant if she could open the files, and if she couldn't, to please let her know. The Tenant stated that she got this email but decided not to tell the Landlord she couldn't open the files.

I note the following Rule of Procedure:

> *3.10.5 Confirmation of access to digital evidence*
>
> *The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will*

only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

I note the Landlord asked the Tenant if she could open the evidence, which was sent by email. The Tenant failed to reply to the Landlords second series of emails. I find the Landlord fulfilled her obligations, under the Rules of Procedure, with respect to sending the evidence to the Tenant, and attempting to ensure she could open it. I find this evidence is admissible, and it is the Tenants fault for not notifying the Landlord of her inability to open the files, after specifically being asked.

The Landlord sent another set of evidence to the Tenant via email on August 17, 2020. The Tenant stated she got these emails and she was able to open the evidence attached. The Tenant stated the Landlord should have sent it by mail, since email service should have ended on June 24, 2020. I note email service was no longer formally endorsed after June 24, 2020. However, I also note the Tenant acknowledges getting the documents via email in August, without issue. Ultimately, it appears the Tenant received and was able to view these documents, and I am satisfied she has been sufficiently served for the purposes of this application, pursuant to section 71(2)(b) of the Act.

I find all of the Landlord's application and evidence is sufficiently served and is admissible.

Tenant's application and evidence – Service

The Tenant stated she sent her application, Notice of Hearing, and evidence by regular mail on August 28, 2020. The Tenant could not provide any proof of mailing. The Landlord stated she never got the package. The Tenant should have used a verifiable method of service, such as registered mail, or any of the methods laid out in section 89 of the Act. Without further evidence supporting that she served the Landlord with her application package, I am not satisfied she has met the service requirements under section 89(1) of the Act. I dismiss the Tenant's application, in full, with leave to reapply.

Also, since the Tenant's evidence was included in the same package, I find she has also failed to sufficiently serve her evidence. As such, the Tenant's evidence is not admissible, as she has failed to demonstrate it was served to the Landlord.

Issue(s) to be Decided

Landlord:

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the money owed?

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in my decision set out below, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it is pertinent to my findings.

Both parties agree that:

- The tenancy started on May 29, 2019, and ended on May 31, 2020, the day the Tenant moved out.
- A move-in inspection as well as a move-out inspection was completed. A condition inspection report (CIR) was also completed and provided into evidence. The Landlord provided a complete and legible version of the CIR from move-in, but only provided pages 1 of 4, and 3 of 4 for the move-out CIR (in a legible resolution). It appears the Landlord failed to upload pages 2 of 4 and 4 of 4 as part of this proceeding in full resolution. The Landlord provided several low-resolution photos of the move-out condition inspection report as part of the June 11, 2020, upload. However, these photos are not sufficiently clear to read or understand the contents.
- The Landlord stated she provided a full copy of the CIR to the Tenant, and the Tenant did not refute receiving this document.
- The Landlord still holds $800.00 as a security deposit.
- Rent was $1,600.00 per month

The Landlord stated that this house was built only two years ago, and everything is new as of that date.

As per the Monetary Order Worksheet, there were 7 items in total, as follows:

1) $15.00 – Dump Fees

The Landlord explained that the Tenant left piles of garbage outside the rental unit, including a TV and other discarded items. The Landlord did not indicate this dump run was a result of any garbage left inside the unit. The Landlord provided a receipt for the above noted dump fees. The Landlord also provided a photo of the garbage which was placed next to the house, and pointed to the move-out CIR to show that some garbage was noted, and that it needed to be disposed of. The Landlord stated that the Tenant never returned to remove the garbage, so they had to dispose of it.

The Tenant denies that she left any garbage behind, and stated that the garbage that was left behind, as shown in the photo, was from the Tenant downstairs. The Tenant stated that she only left behind basic garbage and recycling, which would be picked up as part of normal biweekly pickup.

2) $13.81 – Laundry door part

The Landlord stated that the Tenant broke the track on the laundry room door earlier this year. This was noted in an inspection earlier this year. However, the inspection report filled out by the Landlord at that time (January 2020) was not signed by the Tenant. The Landlord noted that the Tenant never fixed the broken slide mechanism before she moved out. The above noted amount is what it cost for the replacement part. A receipt was provided. The Landlord did not point to any specific photos of this item, but stated that it is noted in the condition inspection report at move-out.

The Tenant acknowledged that the track broke while she was living in the rental unit, but feels that she should not be responsible for this because she had popped the track back in place by the time she moved out. The Tenant stated that at the time she moved out, the track and door was working.

3) $425.00 – Cleaning fees

The Landlord stated that the Tenant left the rental unit very dirty, with many surface stains, dirt and debris on nearly all surfaces. The Landlord pointed to photos she took at the end of the tenancy to show the splatters, stains, scuffs, the dirty toilet, dishwasher,

stove, washing machine, flooring, walls, and stove top, among other things. The Landlord stated that everything needed re-cleaning, and she hired cleaning company to come and clean the unit after the tenancy ended. The Landlord provided a receipt for this item, and noted that it took 3 professional cleaners 3 hours to clean the suite. The Landlord pointed to the condition inspection report to show that it was clean at the start, but nearly everything was dirty at the end of the tenancy.

The Tenant stated that the Landlord has unreasonable standards for cleaning and she feels she sufficiently cleaned the unit before she left. The Tenant stated she spent an entire day cleaning before she left, which should be sufficient.

4) $92.29 – Fridge door bin replacement

The Landlord stated that the Tenant broke a plastic bin that attached to the fridge door, which had to be replaced. The Landlord provided a receipt for this item.

The Tenant acknowledged breaking this part of the fridge and was willing to accept responsibility for its replacement.

5) $19.03 – Cold air return vent cover

The Landlord explained that the Tenant broke the cold air return in the 3rd bedroom. The Landlord provided a receipt for this item, and noted that there was nothing wrong with this vent at the start of the tenancy, as noted in the move-in CIR.

The Tenant acknowledges breaking this item, and that she is responsible for the replacement cost.

6) $637.88 – Wall repairs and repainting

The Landlord stated that the Tenant caused damage to the drywall in numerous places. The Landlord stated that this damage was beyond reasonable wear and tear and many of the holes required patching, filling, and sanding, followed by repainting of the affected areas. The Landlord pointed to the move-out CIR, as well as the photos to show the different scuffs, gouges, scratches, and stains on the walls, the trim, and the ceiling. The Landlord stated that there were stains and splatters on some of the walls, trim and ceilings that would not come off. As a result, some select areas needed to be repainted.

The Landlord provided a receipt for this work, and stated that they only paid to have select areas repainted where there was damage. The Landlord noted that this unit was last repainted when it was built, 2 years ago.

The Tenant stated that she did not gouge the walls, as alleged, and the only holes or damage that was left was from hanging photos on the walls. The Tenant feels this is reasonable wear and tear, and she should not have to pay for minor repainting or for a few small holes from hanging photos.

7) $137.20 – Blind repair

The Landlord stated that the blinds in the master bedroom were damaged such that they would not open and close properly. The Landlord pointed out that the blind was in good condition at the start of the tenancy, as per the move-in CIR. However, at the end of the tenancy, this particular blind was broken, as per the photos taken after the Tenant moved out. The Landlord provided a receipt for this repair, and noted that they had the blind company come, remove, repair, and reinstall the blind, as it was cheaper than replacing it. The Landlord stated that this broken blind was also noted during their January 2020, quarterly inspection.

The Tenant acknowledges that the blind stopped working properly while she was living in the unit, but stated that it is “common malfunction” that happens with blinds, which she should not be responsible for. The Tenant stated she did nothing wrong and denies misusing the blind.

Analysis

The Landlord is seeking monetary compensation for several items, as laid out above. These items will be addressed in the same order for my analysis. A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence (move in inspection, photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I note the parties completed a move-in CIR, and signed a copy of this document together. I find this document provides consistent and reliable evidence with respect to the condition of the rental unit at the start of the tenancy. However, the parties disagree about the Landlord's characterization of the rental unit at the end of the tenancy. It appears a move-out inspection was completed on June 1, 2020. It also appears the CIR was completed at move-out.

The Landlord provided a low-resolution copy of the move-out CIR (all pages), as well as a high resolution copy of the move-out CIR (but only provided 2 of 4 pages). I note the low-resolution version is not legible. Further, the higher resolution version is missing 2 of 4 pages. In any event, I do not have a complete and legible copy of the move-out CIR, which can be used as reliable evidence as to the condition of the rental unit at the end of the tenancy. I do not find a partial copy is sufficiently reliable.

I find the move-out CIR is of limited evidentiary value, since it is incomplete and/or illegible. Given the limited evidentiary value of the move-out CIR, I have given it no weight. In this decision, I will rely on photos (taken at the end of the tenancy) and testimony to determine the condition of the unit at the end of the tenancy.

Next, I turn to the Landlord's monetary items, as laid out above. They will be addressed in the same order as above:

1) $15.00 – Dump Fees

Having reviewed the testimony and evidence on this item, I note the photo pointed out by the Landlord appears to show a pile of recycling and other minor garbage items, stacked beside the house, alongside the normal trash bins. I find there is insufficient evidence to show that these items, left outside, are the Tenants items, rather than from the other rental unit. I note this is a shared garbage facility, and the Landlord has not sufficiently demonstrated that this garbage was not from the lower unit. Ultimately, I am not satisfied that the Tenant is liable for this amount. I dismiss this item, in full.

2) $13.81 – Laundry door part

Having reviewed the evidence and testimony presented for this item, I find it more likely than not that the Tenant damaged this door track and that it needed replacement as a result of damage she or another occupant caused. It is undisputed that the door was functioning properly at the start of the tenancy. The Tenant does not dispute that the door came off its track while she was living there, and that this was identified as an issue at the January 2020 quarterly inspection. Although the Tenant stated that she put the door track back in place prior to when she vacated the unit, I find it more likely than not that there was a broken piece which was preventing it from staying properly in place. I note the type of track mechanism referred to by the Landlord is not overly durable, and it seems likely than if this door fell off its hinge/track mechanism, that it did so because it has a small broken piece. I find it more likely than not that the Tenant caused this damage. I award the Landlord this item, in full.

3) $425.00 – Cleaning fees

Having reviewed the testimony and evidence on this matter, and as noted above, I find the move-out portion of the CIR is not reliable in terms of demonstrating the condition at the end of the tenancy. I turn to the photos taken by the Landlord after the Tenant vacated the property to highlight this matter.

Residential Tenancy Policy Guideline #1 states the following:

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her

guest. The tenant is not responsible for reasonable wear and tear to the rental unit

After reviewing the photos taken by the Landlord at the end of the tenancy, I find there was significant debris and staining left by the Tenant on many different surfaces. I find some areas of the rental unit do not comply with reasonable cleanliness and sanitary standards. Although the rental unit was not left in an *extremely* poor state, I am satisfied that it would have required cleaning prior to another Tenant using and living in the space. I note there was an accumulation of debris and mould inside the washing machine door, food debris in the dishwasher, burned food on the stovetop, dirty shower/tub, dirty toilet, and many other surfaces. I accept that this would all need to be cleaned before an average reasonable prospective tenant would want to move in. I find the Tenant is liable for this amount, in full.

4) $92.29 – Fridge door bin replacement

Having reviewed this item, I note the Tenant does not dispute that she is responsible for the repair/replacement of this part. I award this item, in full.

5) $19.03 – Cold air return vent cover

Having reviewed this matter, I note the Tenant acknowledges breaking this item, and does not dispute that she is responsible for the above noted cost. I find the Tenant is liable for this item, in full.

6) $637.88 – Wall repairs and repainting

I have considered the evidence and testimony on this matter. I note that, as per the move-in CIR, little to no wall or paint damage was noted at the start of the tenancy. This report was signed by the Tenant on May 28, 2019. I note that the Landlord provided photos, taken at the end of the tenancy, of several gouges on the wall where it appears an adhesive was attached to the wall, and then removed, which also took the drywall surface off, such that it would have required filling and patching before it could be repainted.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to walls and painting:

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.

2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.

3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

As noted in the above Policy Guideline, the Tenant is responsible for washing off and removing scuff marks and stains. Based on the photos provided into evidence, I accept that the Tenant caused minor blemishes, marks, splatters and stains in a few areas throughout the rental unit. Although none of these marks are excessive, the Tenant should have cleaned them off before she left. It also appears that some of these marks and stains had penetrated the paint surface and would not clean off. As such, there were several areas which needed touch up painting to cover up stains left by the Tenant.

I note the Landlord is only seeking the costs related to patching the damaged drywall, and covering up select areas that were stained/damaged by the Tenant. The Landlord is not seeking general repainting costs, as those are typically paid for by the Landlord, approximately every 4 years, as per the Policy Guidelines.

I note the above Policy Guideline also specifically states that the Tenant is responsible for wall damage that has occurred from hanging pictures where large holes or patches

are left on the walls due to adhesive. I find the holes present and caused by the Tenant are sufficiently large such that she is liable for their repairs, and the subsequent touch up repainting of the affected areas. Ultimately, I find the Landlord has presented more compelling and reliable evidence showing that there was some minor wall damage caused by the Tenant (holes and stains). As such, I find she is responsible for this amount, in full.

7) $137.20 – Blind repair

I have reviewed the evidence and testimony on this matter. *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides the following guidance with respect to internal window coverings:

> ***INTERNAL WINDOW COVERINGS***
>
> *The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.*
>
> *[…]*
>
> *The tenant may be liable for replacing internal window coverings, or paying for their depreciated value, when he or she has damaged the internal window coverings deliberately, or has misused them e.g. cigarette burns, not using the "pulls", claw marks, etc.*

I have reviewed the photos on this matter, and although the Landlord asserts the blinds were not used properly, which is why they broke, I find there is insufficient evidence to support this assertion. The photo of the blind taken at the end of the tenancy shows a blind that is largely undamaged and does not show any overt signs of misuse or abuse. I accept that the blinds were not hanging evenly, and required repair, but I do not find the Landlord has sufficiently demonstrated that the Tenant misused them. I note these are “pull down” style blinds, without a pull cord, and they have internal mechanisms which are difficult to assess based on the photos provided. I dismiss this item, in full.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the $100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	**Amount**
Total of items listed above	$1,188.01
Filing fee	$100.00
Less: Security and pet Deposit currently held by Landlord	($800.00)
TOTAL:	**$488.01**

Conclusion

The Landlord is granted a monetary order in the amount of **$488.01**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 30, 2020

Residential Tenancy Branch