Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rancho Management Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL – S, MNDL – S, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The landlord's Application was made on March 26, 2020.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant. The original hearing was held on August 4, 2020 and was adjourned by way of the interim decision issued on the same date.

I note the original hearing was conducted by a different arbitrator. I also note that in her interim decision dated the arbitrator wrote:

> **I Ordered the tenant** at the hearing to provide a detail list of their digital evidence, as they have submitted 121 files that are not labelled. The tenant is to provide a detail list by using the assigned digited file number with a description. As an example, file A5BFA36-### is a photograph of a text message about the flooring. The tenant is to upload this document it into the Dispute Resolution system using their unique ID provided. The tenant must complete this no later than August 25, 2020. The tenant is also to provide a copy of this detail list to the landlord by August 25, 2020, by email. This may or may not assist the landlord as they received 4 different emails with the said to be attachments.

The arbitrator also wrote:

> No further evidence is permitted by either party, except for the detail list that I have ordered above. No amendment or cross applications are permitted by either party.

Upon review of the file I note that the tenant did not upload a list as ordered by the previous arbitrator. I also note the tenant uploaded 43 additional documents as evidence on August 25, 2020, contrary to the original arbitrator's order. At the reconvened hearing the landlord confirmed that he had not received a list, but he did receive the tenant's additional evidence.

The tenant testified that in the original hearing the arbitrator ordered that she was to rename the evidence and resubmit it. Despite the confusion, the tenant confirmed by her testimony that the evidence she uploaded to the file and served to the landlord on August 25, 2020 can be considered as a replacement of all of her previous evidence. I confirmed also that the tenant understood that meant I would not consider any of her evidence that was submitted prior to August 25, 2020.

At the outset of the hearing, the tenant indicated, and as noted in some of her evidence, that she has filed for bankruptcy and as such, she cannot be held responsible for any debt to the landlord. She stated that her trustee had submitted evidence for this proceeding, but I noted that nothing was on the file from her trustee. I advised the tenant that I would proceed with this claim and that once the decision is provided, she should provide a copy to her trustee.

I note here that the landlord's agent, when asked by me as to why actual receipts for the work done on the rental unit had not been submitted he testified that there has been no contact with the owner of the rental unit since the end of the tenancy as they no longer represent the landlord with the exception of his participation at this hearing. As such, the agent confirmed that he cannot confirm actual costs incurred by the landlord.

While the tenant has submitted a significant amount of documentary evidence and provided substantial testimony on the landlord's failure to respond to complaints over the course of the tenancy, I find that, for the most part, her references to events during the tenancy have limited impact on the outcome of this decision. However, I have noted any relevant events in the background and evidence and as part of my analysis sections below.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities and compensation for damage to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on June 27, 2016 for a one-year fixed term tenancy beginning on July 15, 2016 for a monthly rent of $2,200.00 due on the 1st of each month with a security deposit of $1,100.00 paid. I note there is a handwritten statement on the tenancy agreement "Tenant Pays utilities and Enerpro bill" and that this handwritten statement is not initialed by either party. The parties agreed the tenancy ended on March 24, 2020 and that the rent at that time was $2,430.00.

The parties agreed they both attended the move out inspection on March 24, 2020 and that the tenant provided her forwarding address at that time.

The landlord seeks compensation for a utility charge and for the cost of repairs and cleaning of the rental unit at the end of the tenancy. The landlord submitted a Monetary Order Worksheet outlining their claim as follows:

Enerpro (March 2019 to March 2020)	$2,103.13
Stove Replacement	$1,050.00
Sink Crack	$690.00
Painting	$1,500.00
Handywork (drywall and electrical)	$500.00
Cleaning	$380.00
Total	$6,223.13

The landlord explained that the tenant failed to pay the Enerpro bill for the period between March 2019 and March 2020. He further explained that this bill is for charges from the strata to the strata owner (landlord) for heating and cooling of common areas as well as the rental unit. The landlord seeks $2,103.13 for this charge.

In support of this claim the landlord submitted a copy of an invoice dated March 5, 2020 and made out to the owner of the strata (landlord) in care of the tenant in the amount of $2,103.13.

The tenant acknowledges that she stopped paying the Enerpro bills as she did not feel it was appropriate that she be charged for common areas.

The landlord seeks compensation for the costs of cleaning the rental unit in the amount of $380.00. In support of this claim the landlord referred to the Condition Inspection Report and photographs submitted by them as evidence. The landlord submitted a copy of one estimate for the cost of cleaning. The tenant acknowledged that she did not clean the rental unit at the end of the tenancy.

The landlord seeks compensation for the replacement of the stovetop in the amount of $1,050.00 and a cracked bathroom sink of $690.00. In support of this claim the landlord relies again on the Condition Inspection Report and photographs submitted. The landlord has submitted an email estimate for the replacement stovetop but not for a replacement bathroom sink.

The tenant acknowledges breaking the stovetop. However, she states that she reported the breakage to the landlord's agent during the tenancy and that the landlord could not now claim for this as the breakage occurred during a period of exclusion of claims due to her bankruptcy. The tenant does not accept responsibility for damage to the bathroom sink – rather she states that the damage was caused as a result the building settling after construction.

The landlord also seeks compensation for repairing; preparing the walls and painting in the amount of $2,000.00. The landlord relies again on the Condition Inspection Report and photographs for the need for this work. The landlord has submitted one email estimate stating that the work requested could range from $2,000.00 to $3,000.00.

The tenant submitted that some of the damage on the wall was related to the need for her to deal with the unending noise coming through the walls despite her making numerous complaints to the landlord's agent and getting no response from the landlord for the duration of her tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the tenancy agreement required that the "Tenant Pays utilities and Enerpro bill". I also accept, based on the submissions of the landlord, that the Enerpro bill included costs associated with heating and servicing common areas of the residential property.

Section 6(3) of the *Act* states a term of a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations; the term is unconscionable, or the term is not expressed in a manner that clearly communicates the rights and obligations under it. Residential Tenancy Policy Guideline #8 defines a term as unconscionable if the term is oppressive or grossly unfair to one party.

I find that requiring the tenant to pay for the costs of heating of common areas to be beyond the scope of a tenant's obligations for rental and utilities payments. I find that the term is grossly unfair to the tenant. As such, I find the term requiring the tenant to pay the Enerpro bill is unconscionable.

Therefore, I find the landlord is not entitled to recovery of the amount of $2,103.13 for the Enerpro bill. I dismiss this portion of the landlord's claim without leave to reapply.

Section 37 of the *Act* requires a tenant, when vacating a rental unit, to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. I accept from the tenant's own oral submissions that she did not clean the rental unit. I also accept the landlord has provided sufficient evidence to establish the rental unit required

extensive cleaning at the end of the tenancy. Therefore, I find the landlord has established cleaning of the rental unit was required contrary to the tenant's obligations under Section 37. I accept the landlord's estimate of $380.00 to be reasonable and consistent with the amount of cleaning required.

I find, based on the agreement of the tenant and the landlord's documentary evidence, that the landlord has established the tenant broke the stovetop during the tenancy. I do not accept the tenant's position that the passage of time diminishes that obligation. Therefore, I find the landlord has established failure by the tenant to repair the breakage of the stove by the tenancy violates the tenant's obligations to leave the unit undamaged at the end of the tenancy. I am satisfied the landlord has established the value of this replacement in the amount of $1,050.00

In regard to the bathroom sink, I am satisfied that landlord has established that the crack appeared during the tenancy. While I accept the tenant had reported on at least two occasions, during the tenancy, that her bathroom sink was not draining properly, there is no other evidence other than it the Condition Inspection Report and landlord's photographic evidence. Therefore, on a balance of probabilities, I find the landlord has established the tenant is responsible for the damage to the sink.

However, I find the landlord has failed to provide any evidence of the value of the replacement bath room sink. As such I will not grant the amount of $690.00 as claim but will grant the landlord a nominal award of $100.00 as allowed under Residential Tenancy Policy Guideline #16.

Again, from the landlord's documentary evidence of the Condition Inspection Report and photographs, I find the landlord has established the condition of the walls at the end of the tenancy were damaged beyond reasonable wear and tear. I also find that, despite the tenant's testimony that the damage to her bedroom wall was caused as a result of her attempting to stop the noise issues she had complained about to the landlord on numerous occasions, there is sufficient damage to other walls in the rental unit that go beyond reasonable wear and tear.

As a result, I find the landlord has established the tenant is responsible for the damage to walls that required repair and painting.

Based on the landlord's submissions I am satisfied that the cost to the landlord at $2,000.00 is reasonable. However, as the landlord made the claim in the amounts of $1,500.00 for painting and $500.00 for preparation, I find the landlord is entitled to the full amount of $500.00 for paint preparation. As to the $1,500.00 claim for painting, in accordance with Residential Tenancy Policy Guideline 40 where the useful life for interior paint is set at 4 years and the tenancy was almost 4 years in duration, I discount the award by 75% and I award the landlord $375.00 for painting.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$2,455.00** comprised of $380.00 cleaning, $1,050.00 replacement stovetop, $100.00 nominal award for replacement sink, $500.00 wall preparation; $375.00 painting and $50.00 of the $100.00 fee paid by the landlord for this application, as they were only partially successful.

I order the landlord may deduct the security deposit and interest held in the amount of $1,100.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$1,355.00**. 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: October 9, 2020

Residential Tenancy Branch