Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-Application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, compensation for unpaid rent, to retain all or part of the security deposit, compensation for damage or loss and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting compensation for damage or loss, for return of the deposit paid, an Order that the landlord comply with the Act and to recover filing fees from the landlord for the cost of this Application for Dispute Resolution.

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

Preliminary Matters

The tenant's translator explained that she would provide the tenant with translation services. The translator was informed that if at any time during the hearing she had any questions or concerns in relation to her ability to effectively translate for the tenant that she could interject and the concern would be addressed.

The landlord's Application included a request for compensation for unpaid rent. This portion of the Application referred to loss of rent revenue, not unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for damages to the rental unit and for damage or loss?

May the landlord retain the deposit paid?

Is the tenant entitled to a monetary Order for damage or loss?

Must the landlord be Ordered to comply with the Act?

Is either party entitled to filing fee costs?

Background and Evidence

This was a fixed-term tenancy which was the 5th such tenancy between the parties. On June 1, 2005 the tenant paid a deposit in the sum of $657.00 and at the conclusion of the first fixed term subsequent agreements were signed, with the most recent fixed-term running from October 2009 to September 2010. Rent was $1,375.00 per month, due on the first day of each month.

The landlord has submitted the following monetary claim:

Cleaning and wall cleaning	225.00
Door and blind damage	50.00
Hardwood floor damage and repairs	350.00
Damage entrance stair railing	50.00
Damage to heat vent and bedroom fixture	25.00
Carpet cleaning	185.85
Compensation for damage to family and living room carpet	250.00
Loss of rent revenue January 15 – February 15, 2010	1,375.00
Breach of lease	1,000.00
Advertising of unit	270.02
	4,380.87

The tenant has submitted the following monetary claim:

Return of the deposit	709.00
Deduction for wall washing	120.00
Damage deduction	25.00
	3,804.00

The tenancy agreement included an addendum which referenced a term which determined that the tenancy would end on the last day of the agreement but that the parties could also end the tenancy with 2 months notice but that termination could not occur in the months of December, January, March, July or August. This term of the addendum was typed in upper case and included as clause "F."

The landlord included this restriction in the addendum as he travels and during some months finds it difficult to locate new tenants. The term allowing 2 months notice to end the fixed term during specific months only was included in the agreement signed in 2007 as the tenant had told the landlord he would like to purchase a home at some point and might need to move. The landlord felt he was providing the tenant with some flexibility, allowing termination of the agreement prior to the end of the fixed term.

The landlord supplied copies of the last 3 tenancy agreements; each of which had the addendum attached. The last 2 agreements included identical addendums, with identical initials and hand-written written comments in relation to yard maintenance. The addendum attached to the October 1, 2007 agreement included a somewhat different version, but clause "F" was identical in each of the three documents signed by the parties. The parties initialled the 2007 addendum and the bottom of the 2008 addendum.

The tenant testified that in the current agreement the landlord had changed the terms of the addendum without pointing out the changes made included in clause "F," limiting the tenant's ability to give notice ending the tenancy. The tenant signed the agreement and addendum, on the basis of the landlord assuring the tenant that the terms were not altered from the addendums signed previous to 2007. The landlord countered that the tenant had read the agreement and addendum each time they had entered into a new agreement.

On October 20, 2009 the tenant gave the landlord written notice that he would move out on December 31, 2009. On December 18, 2009 the parties signed a mutual agreement that determined the landlord would be given possession on December 21, 2009, that the landlord would retain the deposit, not seek any further damages for loss of rent revenue, but that he could claim for any damage to the rental unit. The landlord also agreed to clean the kitchen and 2 bathrooms, as he was going to complete some renovations. This agreement failed, the tenant paid rent for all of December and remained in the unit.

The landlord had planned on completing renovations to the bedroom and kitchen and had wanted to commence these renovations before the end of December, 2009. When the tenant objected to the work that commenced on December 21, 2009, the landlord ceased the work until he had vacant possession of the unit. The invoice for work completed indicated that renovations occurred between January 2 and 14, 2010.

A move-in condition inspection report signed by both parties was submitted as evidence. The report indicated some areas of minor damage, none of which relate to the claims being made. The tenant stated that he did not record items that he noted were damaged at the start of the tenancy as he had signed the tenancy agreement and did not know that he had a right to notate damages on the report.

The parties met on December 28, 2009, to complete a move-out condition inspection, but the report was not completed as conflict arose and the tenant left the premises.

During the hearing the tenant offered the landlord $25.00 for damage to the railing and for blind replacement. The tenant acknowledged that a plastic heat vent was damaged and that it should be valued at less than $5.00. The tenant also offered the landlord $120.00 for wall washing costs, as the landlord had previously agreed to this amount.

The landlord supplied photographs of the rental unit taken on December 21 which showed, among other things; scratched and damaged hardwood, paint removed from a railing, dirty carpets, dirty walls, a dirty master bathroom, a missing light fixture globe in the master bedroom and a damaged blind.

The landlord submitted a receipt dated February, in the sum of $2,675.00 for repairs and renovations made to the rental unit between January 2 and Januarys 14, 2010; including wall washing, painting and repair to the hardwood railing. The landlord has a handyman business and the work was completed by this business.

The rental unit was last painted approximately 5 years ago, by the previous tenant. The landlord is claiming a reduced amount for the cost of painting, taking into account wear and tear and the need for cleaning the walls at the end of the tenancy.

The claim for hardwood damage has been reduced by the landlord, taking into account normal wear and tear that would occur during the time the tenant lived in the unit. The landlord submitted a copy of a January 24, 2010, estimate for hardwood floor replacement in the sum of $1,443.00 which indicated that the floor had a lot of heavy wear areas caused by neglect and unprotected furniture.

The tenant stated that compensation for any damage to the hardwood flooring is out of the question as he lived there for 5 years and the damage is the result of normal wear and tear. The tenant submitted that the floors were damaged at the start of the tenancy. The move-in condition inspection signed by the parties does not reference any damage to the floors.

The landlord provided photographs of a door that had some light scraps and one with a sticker mark.

The master bedroom light fixture globe was missing and a vent in the family room was damaged. The tenant left the light globe in the master bedroom; the landlord disputed

this testimony. The landlord stated he purchases light fixtures in bulk and did not submit a receipt verifying purchase of this item.

The landlord submitted a copy of a carpet cleaning receipt issued on January 14, 2010, in the sum of $185.85, which indicated that there were spots in the family room and bedroom, that most areas “lifted” and that there was a lot of soap in the carpet.

The tenant provided a written statement by an individual who assisted the tenant with cleaning the carpets after the tenant had moved out. This statement indicated that a steam carpet cleaner was used on the carpets for a total of 2.5 hours and that the carpets were aged. The tenant submitted that he had cleaned the carpets twice.

Photographs submitted as evidence by the tenant carpets were taken with a cell phone and, as a result, were difficult to discern. These photographs showed areas around the front gate, the stairs, recreation room and den indicated that cleaning had occurred, but several were too blurred to show any detail. The landlord’s photographs indicated dark stains in the entry, family room and master bedroom.

The tenant believes that the landlord completed renovations, had people coming and going from the unit and that the additional carpet cleaning was required as the result of the renovation, not due to inadequate cleaning by the tenant.

The landlord has claimed for replacement costs for carpet that was irreparably damaged in the family and master bedrooms. The landlord took into account the age of the carpet and the loss in value of the carpet due to extreme staining that occurred during the tenancy. The landlord estimated that the carpet was approximately 10 years old.

The landlord is claiming loss of rent revenue for the equivalent of one month, as the fixed term tenancy agreement addendum allowed the provision of 2 months notice, but did not allow the tenant to end the tenancy in December. The tenant gave proper notice, according to the tenancy agreement, but that notice failed to comply with clause “F” of the addendum, which prohibited the tenant from giving notice ending the tenancy in December. The landlord was able to rent the unit out effective February 15, 2010. The landlord has taken into account the 2 weeks spent on renovations and deducted that from his claim for loss of rent revenue.

The tenant testified that the original tenancy agreement and addendum did not include a clause “F,” and that he signed the last 3 fixed term agreements and addendum based upon assurance of the landlord that the terms had not changed. The tenant submitted that he should not be required to pay rent beyond December, 2009, and that he gave notice as set out in the terms of the agreement, as he understood them.

A copy of a December 28, 2009, cleaning business estimate indicating wall washing and the main floor cleaning for 2.5 hours at the sum of $90.00 per hour was submitted as evidence of the cleaning required.

Both of the landlord's witnesses provided testimony which confirmed the testimony of the landlord in relation to the state of the rental unit at the end of the tenancy.

The landlord has claimed compensation for advertising of the rental unit. Initially the unit was advertised in October at $1,500.00 per month, then on December 15 for $1,430.00 per month and next on January 10, 2010, for $1,375.00 per month. Copies of advertisements made on popular web sites and newspapers were submitted as evidence. The initial ads indicated that the unit was available January 1, 2010 and the landlord indicated he was flexible, offering the unit for later in January.

The tenant testified that the increased rent the landlord was initially seeking resulted in a delay in obtaining new occupants; the landlord stated that the rent had been increased only once in 5 years and that the advertised rent was not unreasonable. The landlord had included the terms limiting the months notice could be given as he knew he would be away travelling and that December is a difficult time of the year to locate new tenants. Invoices for advertising were submitted as verification of costs in support of the landlord's claim.

The tenancy agreement addendum included a clause "V" which determined that a failure to obey the terms and conditions of the agreement:

> *"after one written warning will result in non-refund of damage deposit. A fee of $1,000.00 for breach of the lease and or increase in rent by $100.00 to perform maintenance and possible repairs."*

As the tenant gave notice ending the tenancy in December, a breach of clause "F" of the addendum, the landlord is claiming $1,000.00 compensation, as provided by clause "v" of the addendum.

The tenant has included in his monetary claim the sums for $120.00 for wall washing and light, vent and wood strip damages in the amount of $25.00, which he believes forms adequate compensation to the landlord.

The tenant is requesting return of the deposit paid.

The tenant is claiming compensation for loss of a parking space through 4.5 years of the tenancy in the sum of $50.00 per month. The tenant was told he would have parking in the driveway, but throughout the tenancy he had to park on the street. The tenant spoke with the landlord on 2 or 3 occasions, requesting a resolution and then became frustrated and stopped requesting a solution.

The landlord stated he was never asked to resolve a parking issue and that the addendum provided the tenant with one small car, open parking arrangement in the driveway.

Analysis

In relation to the claims made against and for the deposit; I find that the landlord applied claiming against the deposit within 15 days of the end of the tenancy; as required by section 38 of the Act. The tenant failed to remain on the premises to complete the move-out condition inspection; therefore, I find that the landlord did attempt to comply with section 35 of the Act, by arranging a time to complete the inspection.

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*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find, from the evidence before me and the tenant's testimony offering some costs for wall washing, that the landlord is entitled to compensation, as estimated by the cleaning company in the sum of $180.00.

Residential Tenancy Branch Policy suggests that a rental unit should be painted at least once every 4 years. I find this a reasonable expectation and on that basis dismiss the claim for painting costs as the unit had not been painted in approximately 5 years.

The tenant has offered the landlord $25.00 for door damage and vent damage and during the hearing included blind damage in this sum as well. Based on the tenant's acknowledgement of damage to these items I find that the landlord is entitled to compensation in the sum claimed.

The photographs submitted by the landlord indicated damages to the hardwood flooring that appear to have been caused by furniture that was allowed to rub against the floor. I find, on the balance of probabilities and, based upon the move-in condition inspection report which the tenant signed, that the floors were in good condition at the start of the tenancy and that the damage caused is beyond reasonable wear and tear.

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. The tenant appears to have allowed his furniture to rub against the flooring and failed to protect the floor through installation of commonly used protective pads. I find that the cost of repairing the floors, less a deduction for wear and tear made by the landlord is reasonable. Therefore, I find that the landlord is entitled to compensation in the sum of $350.00, based upon the invoice submitted as evidence.

The landlord testified that the vent could be purchased for approximately $5.00; therefore, I find the landlord is entitled to that amount for the vent. In relation to the light globe, in the absence of a receipt indicating purchase of the globe and, based upon the disputed testimony, I dismiss this portion of the landlord's claim.

The tenant offered the landlord the equivalent of $25.00 for damage to the railing and wall washing. As the tenant acknowledged some damage to the railing, I find that the landlord is entitled compensation in the sum of $12.50.

Residential Tenancy Branch Policy suggests that rental unit carpets have a useful life of approximately 10 years and I find that this is a reasonable expectation. As the carpets in this unit are estimated by the landlord to be 10 years old, I dismiss the claim for carpet replacement costs. I also find that the tenant made adequate efforts to clean the carpets after the photographs were taken by the landlord on December 21, 2009, as the tenant cleaned the carpets after that date.

In relation to the claim for loss of rent revenue, I find that the tenant signed the addendums over the past 3 years, all of which included a term prohibiting notice ending the tenancy in December. I find that the landlord did make reasonable efforts to rent the unit and that, even if advertising had not occurred prior to December that the notice given by the tenant could only have been effective for February, as the addendum prohibited notice ending in December or January.

I have rejected the tenant's submission hat he did not read the addendums as the tenant has initialed the addendum on at least 2 occasions and must accept responsibility for entering into a contract, whether he chose to read it or not. Therefore, I find that the landlord is entitled to compensation for one month's unpaid rent as a result of a breach of the tenancy term agreed to by the parties, in compliance with the Act.

In relation to the portion of the landlord's claim for breach of the lease agreement, I have considered Residential Tenancy Branch Policy referencing liquidated damages. The policy suggests:

> *A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, a dispute resolution officer will consider the circumstances at the time the contract was entered into.*

I find that clause "V" of the addendum fails to meet the requirements of the Act. The clause requires the tenant to forfeit the deposit; which is a breach of section 20 of the Act; which prohibits a tenancy agreement to include a deposit forfeiture clause. The

balance of clause “V” indicates that the tenant must pay $1,000.00 for breach of the lease “and or increase in rent by $100.00 to perform maintenance and possible repairs.” I find this term confusing and lacking in clarity. Section 6 of the Act requires tenancy agreement terms which clearly communicate the rights and obligation under the agreement.

I also find that the landlord’s claim under clause “V” duplicates that made for the actual advertising costs claimed.

Therefore, in the absence of a clearly expressed term in relation to clause “V” and on the basis that the landlord has also claimed costs related to re-renting the unit, I dismiss the claim for breach of the agreement.

Based upon the receipts submitted for advertising costs required as a result of the tenant giving notice ending the tenancy in breach of clause “F” of the addendum, I find that the landlord is entitled to costs claimed for advertising.

Therefore, I find that the landlord is entitled to the following compensation:

	Claimed	Accepted
Painting – adjusted cost	600.00	0
Door and blind damage	50.00	50.00
Hardwood floor damage and repairs	350.00	350.00
Damage entrance stair railing	50.00	12.50
Damage to heat vent and bedroom fixture	25.00	5.00
Carpet cleaning	185.85	0
Compensation for damage to family and living room carpet	250.00	0
Loss of rent revenue January 15 – February 15, 2010	1,375.00	1,375.00
Breach of lease	1,000.00	0
Advertising of unit	270.02	270.02
	4,380.87	2,242.52

As the landlord attempted to complete the move-out condition inspection with the tenant, I find that the landlord is entitled to retain the deposit plus interest in the sum of $680.25 in partial satisfaction of the claim for compensation.

As the landlord’s Application has merit I find that the landlord is entitled to filing fee costs.

In relation to the tenant’s claim for loss of parking, the parties did not agree on any of the facts related to the loss of parking or any complaints made by the tenant. The tenant did not supply any evidence of communication made with the landlord outlining concerns in relation to parking, any verification of a loss experienced or any evidence that he attempted to minimize the claim he is now making. The tenant allowed this claim to accumulate throughout the tenancy and did not take steps to rectify the

situation early in the tenancy, either through written communication with the landlord or via a remedy as provided by the Act.

Therefore, in the absence of evidence that the tenant did lose parking space and in the absence of evidence that the tenant attempted to mitigate the loss he is now claiming, I dismiss the claim for parking compensation.

	Claimed	Accepted
Compensation for unused parking space	3,240.00	0
Deduction for wall washing	120.00	Not claimed
Damage deduction	25.00	Not claimed
	3,804.00	0

As the tenant's Application does not have merit I decline filing fee costs to the tenant.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $2,292.52, which is comprised of $2,242.52 in damages and loss of rent and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of $680.27, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of $1,612.25**.** In the event that the tenant does not comply with this Order, it may be served on thetenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant's claim is dismissed.
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 25, 2010.

Dispute Resolution Officer