Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: **MND, MNSD, MNDC, FF**

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting compensation for damage to the unit; damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant 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 e and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of $1,569.16?

Is the landlord entitled to compensation in the sum of $725.00 for loss of rent revenue?

May the landlord retain the deposits in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The parties confirmed that a tenancy was first created in June 2007 when a pet and security deposit in the sum of $700.00 each was paid. Since that time the parties have

signed 5 month fixed term tenancy agreements. Copies of the last 2 agreements were submitted as evidence; one term running from February 1, 2011; and second from July 1 to November 30, 2011. Rent was $1,444.80 and, effective July 1, 2011, was increased to $1478.00, payable on the first day of each month.

The landlord has made the following claim:

Fire place cleaning, duct cleaning	200.48
Blinds	120.96
Labour	397.75
Gardening	105.00
Landlord labour	200.00
Landlord loss of income	725.00
Storm door closer, pan rings/stove	57.36
Dump costs	92.26
Dumping cost	25.75
TOTAL	2294.16

There was no condition inspection report completed in June, 2007.

A June 13, 2011, condition inspection report was completed, in which the code column was used to reflect the condition of the unit on that date; as the parties signed a new fixed term to commence July 1, 2011. This report did not indicate the need for any cleaning. The landlord stated she used this report only to create a record of the items in the rental unit.

The landlord provided a copy of a move-in condition inspection report completed on February 1, 2011; the start of the previous 5 month fixed term; the code column was utilized to indicate that items were present; no information was included as to the condition of the unit. The same report was utilized at 8:30 p.m. on June 30, 2011, for the move-out condition inspection, at which time codes were placed in the start of tenancy column.

The landlord supplied a copy of a separate list of fixtures and areas of the home which were reviewed with the tenant at 1 p.m. on June 30, 2011. This list included areas that required further attention by the tenant, such as blind cleaning, repairs that were required and appliances that needed cleaning.

The landlord supplied 2 invoices that referenced cleaning costs; the landlord also claimed for her own time spent cleaning. The condition inspection report completed and signed by the parties at 8:30 p.m. on June 30, 2011, indicated the need for cleaning of the fireplace, oven, stove, exhaust hood, kitchen sink, main bathroom ceiling and closet shelves. The landlord stated the tenant had been provided a new stove at some point during the tenancy. The tenant signed the report agreeing to fence damage caused by his dog; however the landlord has not submitted a claim for damage to the fence.

The tenant submitted that he took the week off prior to moving and that he spent a considerable amount of time cleaning. The tenant stated the unit was not completely clean when he originally moved in and that his cleaning may not have been to the exacting standards of the landlord but he felt he had had left the home reasonably clean. The tenant did not dispute the state of the stove but disagreed that he had been given a new stove during the tenancy. The tenant submitted that the photographs supplied by the landlord were taken during the day, while he was still cleaning the unit and do not provide an accurate reflection of the state of the unit once he had moved out.

The landlord referenced a term of the tenancy agreement that indicated a deduction would be made from the deposit for cleaning the heating ducts and floors. The landlord stated the tenant failed to have the ducts cleaned; and that this term referred to removal of the floor vents. The receipt supplied referenced duct cleaning in the sum of $110.00 plus fireplace cleaning costing $69.00 plus taxes.

The tenant stated that he did not clean the fireplace as it had been full of ashes at the start of the tenancy and that he had wiped the heat vents down before vacating.

The blind cleaning invoice dated July 7, 2011, indicated that it appeared the blinds had never been cleaned. The tenant stated that the blinds were fine and did not require cleaning. The condition inspection report indicated that all of the blinds were in either fair or good condition. The photographs supplied as evidence showed blinds that were dirty.

The landlord claimed costs for the installation of a front and back screen door, hydraulic closing costs, light fixture repair, drywall repair, power washing of the front steps, deck, stairs, siding, patios, storm doors; to move the fridge and stove, wash the bathroom walls and ceiling. The landlord stated that the home is 25 years old and that the doors are original.

An invoice for gardening costs and fees for time spent hauling items to the landfill, plus dumping fees, were submitted by the landlord. The tenant stated that nothing had been left behind after he vacated. The condition inspection report indicated that the garbage containers were full.

The tenant stated that early in the tenancies he told the landlord that the screen doors were not staying closed and that they were banging in the wind. The tenant stated the hydraulic closers were broken and eventually he removed both doors and placed them in the basement. During the tenancies since June 2007 the landlord had not showed any interest in making repairs to those doors. The June 30, 2011, condition inspection indicated that the doors had not been installed; that they were stored. The tenant stated he did not think he should be responsible for power-washing of the exterior of the home.

After signing a new fixed term agreement on June 13, 2011, the tenant gave the landlord notice ending his tenancy. He vacated the rental unit on June 30, 2011; the landlord was able to locate new occupants effective July 15, 2011. The tenant alleged the landlord ceased making attempts to find new occupants; the landlord stated that she made reasonable efforts and has only claimed one half of July 2011, rent, as compensation for loss of revenue.

The landlord provided copies of invoices for all amounts claimed; outside of her own labour. The landlord supplied copies of numerous photographs taken during the day on June 30, 2011; and during the time the unit was being cleaned.

The tenant stated that the landlord has retained the pet deposit in the sum of $700.00 that was paid in June, 2007. The tenant stated that he believed the landlord must return double the pet deposit, as she has not submitted a claim against the pet deposit.

The landlord responded that the deposit was paid by one cheque in the sum of $1,400.00. The landlord did not claim against the deposits for any damage caused by the tenant's dog, but believed the deposit paid was not considered a pet deposit.

Analysis

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.

Section 6(3) of the Act determines that tenancy agreement terms which are inconsistent with the Act are unenforceable. Section 20(e) of the Act prohibits any term which requires deductions from the deposit at the end of the tenancy. Therefore, I find the clause allowing the landlord to retain the deposit for duct cleaning is unenforceable.

Section 21 of the Residential Tenancy Branch Regulation provides:

> ***21*** *In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection,* ***unless either the landlord or the tenant has a preponderance of evidence to the contrary****.*
>
> (Emphasis added)

In other words, if the landlord wishes to request compensation for damage to the rental unit, the landlord has the burden of proving those damages occurred prior to the end of the tenancy and any compensation will be based on evidence of such damage.

I have relied upon the condition inspection report completed on June 30, 2011, at 8:30 p.m. as the final report, which reflected the state of the unit at the end of the tenancy. I find that the check-list completed by the landlord at 1 p.m. on June 30, 2011, has little weight, as the parties then signed a final report that evening.

I have referenced Residential Tenancy Branch policies in relation to the landlord's claim and find policy takes a reasonable stance. I have also considered section 37 of the Act which requires a tenant to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Branch policy suggests that a landlord is responsible for cleaning the furnace ducts and that a tenant is responsible for cleaning the floor vents. The invoice supplied by the landlord indicated charges for duct cleaning; therefore, I dismiss this portion of the landlord's claim, as tenants are not responsible for duct cleaning. I have considered the vent cleaning, in relation to overall cleaning costs.

Policy suggests that the tenant must clean the fireplace if it is used. Despite the condition of the fireplace at the start of the 2007 tenancy, I find that the tenant was

responsible for removal of ash at the end of the tenancy. The photographs indicated that the fireplace was not cleaned; therefore, I find that the landlord is entitled to $77.28 in cleaning costs supported by the invoice.

Based on the photographic evidence before me, despite the notations made on the condition inspection report that the blinds were either in fair or good condition, it is clear that the blinds were dirty. Whether these photos were taken on June 30 or just prior to the date they were cleaned, I find that the tenant failed to clean the blinds. The July 7, 2011, invoice supplied as evidence supported the landlord's claim and I find this cost is the responsibility of the tenant. Even though the condition inspection report included a reference to the blinds, I find, on the balance of probabilities, that the landlord has provided evidence supporting her claim.

In relation to the power washing of the exterior of the home, I find that this formed part of maintenance that extends beyond that considered a tenant's responsibility; such as yard and garden maintenance. Therefore, the claim for power washing is dismissed.

The photographs showed the need for some trimming, and the condition inspection report referenced poor trimming of the grounds and walks; therefore, I find that the tenant is responsible for gardening costs supported by the invoice.

The condition inspection report indicated that the storm doors were in storage and I find, after a tendency that lasted through a series of fixed terms over a period of 4 years, that the landlord had provided consent and understanding that the storm doors had been removed due to a malfunction of the hydraulic mechanism. The doors were beyond the lifespan suggested by policy, of twenty years, and I find that the repairs were the result of wear and tear over a period of many years. Therefore, the claim for door repair is dismissed.

The tenant sated that the stove was not new and that the stove rings were old. The landlord stated that the stove had been supplied to the tenant during one of his fixed term tenancies; however the age of the stove was not established. In the absence of evidence of the age of the stove top rings, I find that the condition of the rings cannot be determined to be the result of negligence by the tenant. Therefore, the claim for stove rings is dismissed.

I find that the landlord is entitled to compensation equivalent to one half of July, 2011, rent revenue. On June 13, 2011, the tenant signed another 5 month fixed term tenancy agreement commencing July 1, 2011. Section 45 of the Act does not allow a tenant to

end a fixed term tenancy unless the landlord has breached a material term of the tenancy that has not been corrected within a reasonable period of time after being given written notice by the tenant. There was no evidence before me of any breach of a material term of the tenancy by the landlord; further, I find that landlord minimized the loss claimed by quickly locating new occupants.

I find that the landlord has failed to prove, on the balance of probabilities that the tenant left behind items that supports the claim for hauling to the landfill. The only reference to garbage on the condition inspection report was a comment that the garbage containers were full. Therefore, the claim for landfill costs is dismissed.

From the comments contained on the condition inspection report and the photographic evidence before me I find, on the balance of probabilities that the tenant failed to leave the rental unit in a reasonably clean state. The tenant may have completed some cleaning, but I find those efforts did not meet the standard of reasonably clean, as required by the Act. Therefore, in consideration of the invoiced costs that included cleaning, I find that the landlord is entitled to cleaning costs for all items claimed in the sum of $250.00.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Cleaning service	369.60	0
Blinds	120.96	120.96
Labour	397.75	0
Gardening	105.00	105.00
Landlord labour	200.00	0
Loss of ½ July, 2011 rent revenue	725.00	725.00
Storm door closer, pan rings/stove	57.36	0
Dump costs	92.26	0
Dumping cost	25.75	0
SUB-TOTAL	2294.16	1028.24
Overall Cleaning costs		250.00
TOTAL		1,278.24

In relation to the deposits held in trust, I find that the landlord is holding a pet and security deposit in the sum of $700.00 each, as indicated in the tenancy agreement

supplied as evidence. The tenancy agreement clearly sets out payment of the 2, separate deposits.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of the deposit.

The landlord applied claiming against the deposits within 15 days of June 30, 2011. The application indicated that the landlord wished to retain all or part of both deposits. Section 38(4) of the Act states that a landlord may retain an amount from a deposit, if an order is issued to the landlord. However, section 38(7) of the Act provides:

> *(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.*

Section 38(6) of the Act provides:

> *(6) If a landlord does not comply with subsection (1), the landlord*
>
> > *(a) may not make a claim against the security deposit or any pet damage deposit, and*
> >
> > *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

The parties agreed that the tenant signed the condition inspection report acknowledging damage to a board in the fence caused by his dog. However, even though the tenant failed to make the repair, the landlord must specifically claim against the pet deposit. The detailed calculation attached to the application failed to set out any claim against the tenant for damage caused by the tenant's pet. The invoices supplied by the landlord did not contain any reference to fence repair costs. Therefore, in the absence of a claim against the pet deposit for damage caused by the pet, I find that the landlord failed to return the pet deposit within 15 days of the end of the tenancy and that section 38(6) requires the landlord to return double the pet deposit to the tenant.

The Act allows a landlord to claim against the security deposit for damage caused by the tenant; the landlord retained the pet deposit without having received written agreement by the tenant to a deduction from the pet deposit. Even if the tenant had agreed to a specific deduction from the pet deposit when he signed the condition inspection report, the landlord would have been required to return the balance of the pet deposit to the tenant within 15 days.

I find that the landlord's application has merit, and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord is holding a pet and security deposit in the sum of $1,400.00 plus interest in the sum of $32.79.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $700.00 plus interest in the sum of $16.39**,** in partial satisfaction of the monetary claim. The landlord is owed a balance of $611.85.

The tenant is entitled to return of double the $700.00 pet deposit plus interest in the sum of $16.40; totalling $1,416.40.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's pet deposit, in the amount of $611.85 in satisfaction of the balance of the monetary claim.

Therefore, I find that the tenant is entitled to the balance of his pet deposit plus interest in the sum of $804.55.

Conclusion

I find that the landlord has has established a monetary claim, in the amount of $1,328.24, which is comprised of $725.00 loss of rent revenue, $553.24 in damages, 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 and a portion of the pet deposit in the amount of $1,328.24 in satisfaction of the monetary claim.

The tenant is entitled to return of double the pet deposit, plus interest. As the amount owed to the landlord has been set off against the deposits held in trust; the tenant is entitled to a balance in the sum of $804.55

Based on these determinations I grant the tenant a monetary Order for the balance of the pet deposit $804.55**.** 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.

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 14, 2011.

Residential Tenancy Branch