



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed July 5, 2012: MNSD; FF

Landlord's application filed July 19 and amended August 30, 2012: MND; MNDC; MNSD; FF

Introduction

This Hearing was convened in response to cross applications. The Tenant has applied for a monetary order in the equivalent of double the security deposit and pet damage deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord has applied for a monetary order for damages to the rental unit, compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and pet damage deposit towards partial payment of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with his Notice of Hearing documents by registered mail. The Landlord acknowledged receiving the documents on July 12, 2012.

It was also determined that the Landlord served the Tenant with his Notice of Hearing documents, including his amended Application for Dispute Resolution, by registered mail. The Landlord provided the registered mail receipt and tracking information in evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit and pet damage deposit pursuant to the provisions of Section 38 of the Act?
- Is the Landlord entitled to loss of revenue for February 1 – 14, 2012 and a monetary award for damages to the rental unit and the cost of cleaning the rental unit at the end of the tenancy?
- May the Landlord apply the security and pet damage deposits towards partial satisfaction of his monetary award?

Background and Evidence

This tenancy began on December 1, 2006 and ended on January 31, 2012. Monthly rent was \$750.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 on December 1, 2006, and a pet damage deposit in the amount of \$375.00 in or about the month of May, 2011.

The Landlord testified that the rental property was built in 1969 and had new carpets installed in 2004. He stated that it was freshly painted at the beginning of the tenancy.

The Tenant testified that there was no Condition Inspection Report completed at the beginning of the tenancy. The Landlord testified that his manager completed an inspection at the beginning of the tenancy, but he did not know why the Tenant did not sign it. The Landlord's manager was not available to give testimony at the Hearing.

The Tenant testified that the Landlord's manager did not perform a Condition Inspection at the end of the tenancy either. The Landlord testified that he believed his manager had provided the Tenant with two opportunities to meet for an inspection, but the Tenant did not attend. The Landlord stated that he did not provide the Tenant with a Notice of Final Inspection Opportunity. The Tenant denied being offered any opportunity to meet for an inspection with the Landlord's manager at the end of the Tenancy.

The Tenant seeks a monetary award in the amount of **\$1,400.00** representing double the amount of the security and pet damage deposit. He testified that he sent the Landlord written notification of his forwarding address on May 29, 2012, by registered mail, to the Landlord's out-of-province address. The Tenant provided a copy of the registered mail receipt and envelope, along with a copy of the letter. The Tenant testified that the registered mail was returned to him "refused". The Landlord stated that he was out of town on holidays when the registered mail arrived and that his son was concerned that registered documents had arrived, but declined to sign for the documents. The Landlord stated that he filed his Application against the security deposit within 15 days of receiving the Tenant's forwarding address on the Tenant's Application for Dispute Resolution.

The Landlord testified that the Tenant moved out of the rental unit without giving proper notice to end the tenancy. He stated that the Tenant sent him an e-mail on January 8, 2012, stating that he would be moving out by February 1, 2012. The Landlord testified that he was able to re-rent the rental unit effective February 15, 2012. The Landlord seeks loss of revenue for February 1 – 14, 2012.

The Landlord testified that the Tenant asked if he could paint the rental unit. He stated that they reached an agreement that the Tenant could paint if he used a neutral colour

and that the Landlord would pay for the paint. The Landlord stated that the Tenant painted the walls of the rental unit an ugly bright yellow and did a poor job of it. He stated that the Tenant painted over door knobs and electrical plates as well as the toilet seat. The Landlord testified that the Tenant did not move some of the furniture and just painted around it, so when the furniture was moved, there was a large area of mismatched paint on the wall.

The Tenant testified that he sent the Landlord a colour paint chip sample of the yellow paint and that the Landlord approved it before he started to paint. The Tenant stated that the door handles, electrical plates and toilet seat were already covered in paint spatter from previous paint jobs, and that he thought it would look nicer if they were at least the same colour as the walls. The Tenant stated that he had every intention of living in the rental unit for a few more years, so he did not move one piece of heavy furniture in order to paint the walls.

The Landlord stated that the carpets were approximately 2 years old and in good shape at the beginning of the tenancy. He testified that the carpets were dirty and stained at the end of the tenancy and have to be replaced. The Landlord stated that he has not yet replaced the carpets, but has provided an estimate for the cost of doing so. The Tenant stated that the carpets were in rough shape when he moved into the rental unit and that they grew moldy due to a leak from the hot water tank. The Tenant stated that the Landlord did not shampoo the carpets at all throughout the 5 year tenancy.

The Landlord testified that the Tenant ruined the finish on the bathtub and that the enamel was worn right down to metal. The Landlord believes the Tenant used caustic materials in the bath tub to cause this damage. The Tenant stated that the bathtub was like that when he moved into the rental unit and that it looked to him as if it was a stain left by a bathmat and minerals in the water.

The Landlord testified that the Tenant installed a cat door in a closet door, which had to be replaced. The Tenant stated that his roommate had installed the cat door, however he agreed that this repair was his responsibility.

The Landlord stated that the Tenant left a lot of belongings and left-over tiling materials in the shed and on the common area of the rental property at the end of the tenancy. The Tenant stated that the shed was rat infested and that it was not safe to remove his belongings. The Tenant testified that the new occupant agreed to keep the couch, hutch and shelving unit, but then decided not to. He stated that the bed frames were not his.

The Tenant submitted that the Landlord's documentary evidence with respect to junk removal are from the Landlord's manager and that they are inflated. He submitted that the Landlord filed his claim in retribution of the Tenant's claim for double the security deposit.

The Landlord stated that the Tenant also broke the automatic closer to the front door. The Landlord seeks a monetary award in the amount of \$2,897.29, calculated as follows:

Loss of revenue, February 1 – 14, 2012	\$375.00
Cost of supplies and labour (paint, door knobs, carpet cleaning, repairs)	\$590.44
Estimate to reglaze the bath tub	\$616.00
Estimate to replace front door closer	\$17.90
Estimate to replace closet door	\$93.23
Estimate to replace ruined carpet	\$1,329.72
Cost to remove and dispose of Tenant's junk	<u>\$250.00</u>
TOTAL	\$2,897.29

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the parties' Applications in this Decision.

Regarding the Tenant's Application:

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit and pet damage deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the deposits.

Section 88 of the Act provides for the ways in which documents must be given or served generally. Based on the Tenant's documentary evidence, I am satisfied that the Tenant sent his forwarding address to the Landlord in writing, by registered mail, on May 29, 2012. The Condition Inspection Report provided by the Landlord indicates that the Landlord's address is the address to which the Tenant sent his forwarding address by registered mail. Therefore, I find that the Tenant provided the Landlord his forwarding

address in writing pursuant to the provisions of Section 88(c) of the Act. Section 90 of the Act deems documents served in this manner to be effected 5 days after mailing the documents whether or not the Landlord accepts delivery of the documents. The Landlord did not return the security deposit or file for dispute resolution against the security deposit within 15 days of being deemed served.

I do not find that the Tenant extinguished his right to claim against the security and pet damage deposits under Section 38(2) of the Act. Part 3 of the Residential Tenancy Regulation requires a landlord to provide two opportunities for a tenant to attend at a Condition Inspection, and to provide the Tenant with a Notice of Final Inspection Opportunity if the Tenant is not available at either of the proposed times. In this case, the Landlord did not provide the Tenant a notice in the approved form and therefore I find that it is the Landlord who has extinguished his right to claim against the security deposit under Section 38(5) of the Act. The Landlord retains the right to claim for debt and damages under Section 67 of the Act.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security and pet damage deposit. Interest in the amount of \$9.98 has accrued on the security deposit. No interest has accrued on the pet damage deposit. Therefore, I find that the Tenant is entitled to a monetary award, calculated as follows:

Security deposit	\$325.00	
Pet damage deposit	<u>\$375.00</u>	
Subtotal	\$700.00	
\$700.00 x 2		\$1,400.00
Plus accrued interest on security deposit		<u>\$9.98</u>
TOTAL		\$1,409.98

The Tenant has been successful in his application and is entitled to recover the cost of the **\$50.00** filing fee from the Landlord, for a total monetary award of **\$1,459.98**.

Regarding the Landlord's Application:

The security and pet damage deposits have been extinguished, and therefore the Landlord's application to apply them against his monetary award is dismissed.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 52 of the Act requires a notice to end tenancy to be in writing and to be signed by the party giving the notice. Section 88 of the Act provides for methods of service of documents. E-mail is not a method provided for in Section 88 of the Act. Section 45 of the Act requires a tenant to give notice to end the tenancy effective on a date that is not earlier than one month after the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. I find that the Tenant's notice to end the tenancy did not comply with Sections 52, 88 or 45 of the Act and that the Landlord has suffered a loss as a result of the Tenant's breach of the Act. Therefore, I allow the Landlord's claim for loss of revenue in the amount of **\$375.00**.

Residential Tenancy Policy Guideline 1 provides clarification of the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of a rental unit. At the end of the tenancy, the tenant is held responsible for steam cleaning or shampooing the carpets after a tenancy of one year, which the Tenant did not do. The Landlord provided an invoice for this cost in the amount of **\$67.20**. I allow the Landlord's claim in this amount.

I accept the Landlord's undisputed testimony that the Tenant did not move furniture when painting the rental unit and that therefore the Landlord had to repaint the unit after the Tenant moved out. I accept the Landlord's testimony that he paid for the cost of paint when the Tenant painted the rental unit during the tenancy. Policy Guideline 1 provides that a landlord is responsible for painting the interior of a rental unit at reasonable intervals. Policy Guideline 8 provides a useful life for interior paint of 4 years. The Landlord testified that the rental unit was freshly painted at the beginning of the 5 year tenancy and I find that the rental unit was due to be painted at the end of the tenancy. Therefore, I allow the Landlord's claim for the cost of the paint, but do not allow the Landlord's claim for labour costs. The Landlord provided receipts totaling **\$196.28** for the cost of the paint. I also allow the Landlord's cost of replacing the electrical plates and door knobs that the Tenant painted over, together with the cost of replacing burned out light bulbs. The Landlord provided receipts totaling **\$68.48** for these items.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean at the end of the tenancy. This includes removing all garbage and other items belonging to the tenant. I find that the Landlord has established his claim for the cost of removing tile, furniture and other garbage belonging to the Tenant. Based on the photographic evidence provided by the Landlord, I find that the amount billed by the Landlord's agent is reasonable and I allow this part of the Landlord's claim in the amount of **\$250.00**.

The Tenant agreed that he was responsible for the cost of replacing the closet door that his roommate had damaged by installing a cat door. The Landlord provided an estimate in the amount of **\$93.23** for this cost, which is also allowed.

I dismiss the remainder of the Landlord's claims. Section 21 of the Residential Tenancy Regulation provides that a Condition Inspection Report completed in accordance with Part 3 of the Regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary. In this case, I find that the Landlord failed to provide sufficient evidence that he complied with Section 14 or 17 of Part 3 of the Regulation. I further find that the Landlord did not provide sufficient additional documentary evidence that the Tenant damaged the bath tub, ruined the carpet or willfully damaged the front door closer.

The Landlord has been partially successful in his claim and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenant.

The Landlord has established a monetary award, calculated as follows:

Loss of revenue, February 1 – 14, 2012	\$375.00
Cost of steam cleaning carpets	\$67.20
Cost of paint	\$196.28
Cost of door knobs, electrical plates and light bulbs	\$68.48
Cost to remove and dispose of Tenant's junk	\$250.00
Estimate to replace closet door	\$93.23
Recovery of filing fee	\$50.00
TOTAL	\$1,100.19

Set-off of awards

I hereby set off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant a Monetary Order for the balance, in the amount of **\$359.79**.

Conclusion

The Tenant has established a monetary award of **\$1,459.98**. The Landlord has established a monetary award of **\$1,100.19**.

I hereby set off the Landlord's award against the Tenant's award and provide the Tenant a Monetary Order in the amount of **\$359.79** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 20, 2012.

Residential Tenancy Branch