# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC, MNSD, FF**

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested come0psnation for unpaid utilities, damage or loss under the Act, damage to the rental unit, to retain the pet and 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 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 unpaid utilities in the sum of $87.00?

Is the landlord entitled to compensation for damage to the unit in the sum of $,2892.00 for floor and wall damage?

Is the landlord entitled to compensation or damage caused by a pet?

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

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in October 2008 and the tenant signed a renewal agreement in April 2011. A security and pet deposit in the sum of $600.00 each were paid at the start of the initial tenancy and transferred over to the new tenancy.

The parties agreed there was a condition inspection report completed at the start of the initial tenancy; the tenant thinks he may have been given a copy, the landlord recalls giving the tenants a copy.

A move-out condition inspection report was not completed when the initial tenancy ended and no inspection was completed in April 2011, at the start of that tenancy. However, the parties agreed that there was a record of the state of the home when the tenant first took possession in 2008.

The tenant gave proper notice in May 2012, to end the tenancy effective June 30, 2012; rent was paid for the month of June. The parties agreed that on June 22 the tenant emailed the landlord in an attempt to meet for an inspection on June 26. The landlord and tenant did talk on the phone; the tenant said that the landlord was too busy to meet on the 26th, and the landlord confirmed this during the hearing. The tenant had to leave for a funeral in Calgary and was away after the 24th.

The landlord said he tried to reach the tenant later in the week, but that the tenant was in Calgary. When the landlord entered the unit after June 30, he communicated with the tenant, as he was upset with the condition of the unit. The landlord agreed that written notice of as initial opportunity to complete the move-out inspection was not issued to the tenant.

The landlord has made the following claim:

| | |
|---|---|
| Utilities | 87.00 |
| Wall repair/painting | 1,642.00 |
| Concrete resurfacing | 1,250.00 |
| | 3,079.00 |

At the start of the hearing the tenant agreed to return the chair to the landlord this weekend. The tenant also agreed that utilities are owed.

The landlord submitted a copy of an estimate for painting and wall repair costs in the sum of $1,642.00. Two concrete refinishing estimates were provided, one in the sum of $1,500.00; another $1,250.00.

The landlord supplied copies of pictures that showed a number of holes left in a bedroom wall, and holes in the bathroom where repair had been attempted. The landlord estimated there were over 30 holes in the walls; photographs detailed approximately eleven holes in the room where a clothes hanger system had been installed and then removed; and sets of holes in the bathroom. Some holes showed drywall anchors and places where anchors had been removed. The tenant had installed a mirror, toilet paper roll and shelves in the bathroom, as theses fixtures were not provided at the start of the tenancy.

The landlord had asked the tenant to leave the items on the walls, in order to avoid the damage that could result from their removal at the end of the tenancy. The unit was freshly painted in 2008.

The landlord estimate for painting costs indicated:

- $12.00 for dry wall mud;
- $20.00 for roller sleeves;
- $10.00 sandpaper;
- 300.00 paint; and
- 1,300.00 for labour.

The landlord supplied a photo of damage to the drywall, approximately 3 inches long, next to the fireplace.

The tenant submitted an estimate he obtained for repair of the holes left by items removed from walls, after showing the landlord's photographic evidence to a painter. The estimate indicated a cost of $300.00. The tenant stated if a condition inspection had been completed at the end of the tenancy he would have been given time to have the required repairs made to the unit.

The tenant stated that there were not an unreasonable number of holes in the walls and that the bathroom holes were the result of the landlord having failed to provide basic fixtures in that room.

The unit flooring, of approximately 750 sq. feet, is a finished concrete that was newly installed just prior to the start of the 2008 tenancy. Photographs supplied by the landlord showed 4 areas where adhesive was left on the concrete, resulting in a need to have the adhesive professionally removed and the complete floor refinished. The estimate obtained via email on July 7, 2012, indicated that repair, including removal of the adhesive and staining of the acid stained floor would cost $1,250.00. The other estimate was in the sum of $1,500.00.

The tenant stated that a carpet left at one door resulted in some rubber backing sticking to the concrete. The tenant agreed that speaker wires that were left underneath carpeting did disintegrate and when the carpet was lifted lines were left on the flooring. The tenant supplied an email that outlined an estimate for sanding and cleaning of the floor in the sum of $200.00 to $300.00. The tenant did not believe that the carpet or the wires would cause damage and does not agree that the complete flooring must be refinished.

The landlord stated that flooring professionals have told him the entire floor must be refinished, in order to have the complete floor match.

The landlord did not supply any verification of the damage caused by the pet for MDF trim or door seal.

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.

In the absence of verification of a loss in relation to damage caused by a pet to MDF trim and door seal; I that portion of the claim is dismissed.

First I will consider the deposits that have been held in trust by the landlord. There was no dispute that a condition inspection report was completed at the start of the tenancy in 2008 and that the parties agreed to renew the tenancy in 2011.

Section 35 of the Act provides:

***Condition inspection: end of tenancy***

> ***35*** *(1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
>
> *(a) on or after the day the tenant ceases to occupy the rental unit, or*
>
> *(b) on another mutually agreed day.*
>
> *(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
>
> *(3) The landlord must complete a condition inspection report in accordance with the regulations.*
>
> *(4) 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.*
>
> *(5) The landlord may make the inspection and complete and sign the report without the tenant if*
>
> *(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
>
> *(b) the tenant has abandoned the rental unit.*

The Residential Tenancy Regulation sets out the method by which an inspection should be arranged. The parties can agree in good faith to meet at a specific time, but a landlord must offer a tenant the first opportunity to schedule the inspection by providing 1 or more dates. If the tenant is not available, he may propose an alternative time. If an

alternative time is not agreed to, then the landlord must give the tenant a 2nd opportunity, by giving notice in the approved form.

If a landlord does not comply with the Act, by providing the opportunities for inspection as set out in section 35 of the Act, the regulation determines that the landlord has extinguished his right to claim against the deposits for damage to the unit, unless a tenant has abandoned the unit.

In this case there was no evidence before me the tenant had abandoned the unit. The tenant was the first person to attempt to schedule an inspection for June 24, 2012; the landlord declined as he was working. The landlord then attempted to reach the tenant, who was in Calgary after the 24th. There was no evidence before me that the landlord gave the tenant a final notice, in the approved form, of a condition inspection. This notice could have been posted to the tenant's door and would have been deemed served on the 3rd day.

When the right to claim against the deposits has been extinguished, section 38(6) of the Act requires that the landlord must return the deposits within fifteen days of receipt of the tenant's forwarding address. The landlord did submit a claim against the deposit within fifteen of the date they received the tenant's written forwarding address. However, when the landlord failed to meet the requirements of the Act and Regulation in relation to scheduling the move-out inspection, the right to hold the deposits was extinguished and the deposits should have been returned within fifteen days of June 30, 2012, when the tenancy ended. The landlord continued to have the right to make a claim against the tenant.

Therefore, as the right to claim against the deposits was extinguished, I find, pursuant to section 38(6) of the Act that the landlord is holding deposits that are doubled in value; $$2,400.00.

Further, as the original tenancy ended and a new tenancy agreement was signed in April 2011; the Act required that a move-out inspection be completed before commencing the April 2012 tenancy. I have accepted that the deposits were transferred effective April 2011, therefore, no interest has accrued.

Policy suggests that when a landlord claims against a deposit, any balance should be ordered returned to the tenant. I find that this is a reasonable stance.

In relation to the claim for painting, the unit was last painted in 2008. Residential Tenancy Branch policy suggests that a unit should be painted every 4 years; therefore, I find that this unit is due to be painted. However, policy also suggests a tenant may leave a reasonable number of holes in walls. From the evidence before me I find that the tenant failed to take steps to repair what were holes that exceeded the size expected from hanging art work and that the landlord is entitled to compensation. I have considered the evidence of both parties and find that the landlord is entitled to

$300.00 for the cost of drywall and sanding, plus $132.00 for supplies. The balance of the claim for painting is dismissed.

The tenant acknowledged that some damage was caused to the concrete flooring. The landlord had supplied a floor that was newly refinished at the start of the tenancy and the tenant was required to return the unit to the landlord in the same condition, taking into account normal wear and tear.

I find that the damage caused by the speaker wires and rubber backed carpeting did cause damage to the concrete flooring; a fact that was not in dispute. The tenant does not believe the complete floor should be refinished and submitted if he had been given the opportunity to repair the floor at the end of the tenancy he would have done so. However, the tenant did acknowledge that he was aware of this damage prior to June 30, 2012. He did not have someone attend at the unit to provide an estimate and instead replied upon an estimate given by someone, after the tenancy ended, who did not have the opportunity to view the flooring.

I find it unreasonable to expect that only a portion of the flooring could be refinished and that the estimates obtained show that the entire floor would require refinishing. Therefore, I find, on the balance of probabilities, given the evidence before me, that the landlord is entitled to compensation in the sum of $1,250.00 for repair to the flooring, supported by the estimate provided as evidence.

Therefore, the landlord is entitled to the following compensation:

| | Claimed | Accepted/Agreed |
|---|---|---|
| Value of chair | 100.00 | Will return |
| Wall repair/painting | 1,642.00 | 432.00 |
| Concrete resurfacing | 1,250.00 | 1,250.00 |
| | 3,079.00 | 1,769.00 |

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the $50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord is entitled to $1,819.00, which may be retained from the deposits of $2,400.00. Therefore, I Order the landlord to return the balance of the deposit, in the sum of $581.00 to the tenant forthwith. A monetary order has been issued to the tenant.

Conclusion

I find that the landlord has established a monetary claim, in the amount of $1,819.00, which is comprised of wall and floor repair, utility costs agreed to by the tenant and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The value of the $1,200.00 security and pet deposits has been doubled to $2,400.00. The landlord will be retaining the tenant's deposits in the sum of $1,819.00 in satisfaction of the monetary claim.

The tenant is entitled to receive the balance of the deposits, in the sum of $581.00.

Based on these determinations I grant the tenant a monetary Order for the balance of $581.00**.** In the event that the landlord not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 19, 2012.

Residential Tenancy Branch