Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, RR, FF

Introduction

This hearing was convened in response to cross-applications for dispute resolution by both parties.

The tenant filed on August 20, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows and the tenant has not materially amended their claim.

1. An Order for the return of security deposit ($1000.00) - Section 38
2. An Order for compensation for loss during the tenancy – Section 67
3. An Order to recover the filing fee for this application - Section 72.

The landlord filed on August 29, 2012 pursuant to the Act for Orders as follows and the landlord has not materially amended their claim.

1. A monetary Order for damages ($4350.00) – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to provide relevant prior submissions of evidence, present relevant *sworn* testimony and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Both parties acknowledged receiving the evidence of the other.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The parties provided an abundance of contrasting evidence of which the relevant Document and testimonial evidence in this matter is as follows.

The tenancy began on September 15, 2008 and ended August 01, 2012. The monthly rent payable was $2000 per month. At the outset of the tenancy the landlord collected a security deposit in the amount of $1000.00 and currently retains it. It is undisputed by the parties that there was no tenancy inspection conducted at the start of the tenancy or at the end of the tenancy in accordance with the Act and Regulations. The landlord claims that at the end of the tenancy they made 2 oral requests for an inspection, with which the tenant disagrees; but regardless, the tenant determined not to participate in an end of tenancy inspection because a start of tenancy inspection was not conducted. The parties agree that the tenant provided their forwarding address, in writing, on August 03, 2012. The parties further agree that the landlord is owed $62.01 for a glass related repair.

The parties did not provide a copy of what they agree exists as an Addendum to the tenancy agreement, but upon confirmation with both parties, each acknowledged that the relevant portion of the Addendum upon which each wanted to rely states:

> *-Yard and garden will be maintained at the owner's expense, including annual maintenance of the irrigation system.*

In addition

> *-any damage to the (irrigation) system as a result of failure to carry out maintenance will be at the tenant's expense.*

The parties agree that the tenant was provided a lawn mower for the lawn maintenance.

The landlord testified that they rely on this evidence to define the tenant's responsibility to maintain the yard and garden as well as the annual maintenance of the irrigation system. The tenant testified that they rely on this evidence to define that the landlord was responsible to maintain the yard and garden as well as the annual maintenance of the irrigation system.

The tenant seeks the return of their security deposit and compensation under Section 38(6) of the Act. The tenant also claims that they are owed compensation as a ratio of the rent paid, because they did not have air-conditioning from July 2011 to August 2012. The tenant also claims compensation because the unit's irrigation system was not properly functional. The tenant claims they informed the landlord but the landlord did not have the purported problems resolved. The landlord claims they did not receive notification of a problem with either system.

The landlord seeks compensation for damages to the unit which the landlord purports were the result of the tenant's actions or conduct during the tenancy and which are beyond reasonable wear and tear.

The landlord claims the rental unit was free of any issues or damage at the start of the tenancy – thus they waived the start of tenancy inspection. The landlord claims that at

the end of the tenancy the rental unit was found to have some paint chips and indentations in many of the walls of the unit, and claims costs for materials and painting to address the deficiencies. At one point the landlord used the term ‘gouges’, with which the tenant disagreed. The tenant claims that any such deficiency expressed by the landlord respecting the wall areas resulted from normal wear and tear during the 4 year tenancy. The landlord claims a sum for this claim of $686.63.

The landlord claims the rental unit was free of issues respecting the exterior landscaping at the start of the tenancy – thus, in part, they waived the start of tenancy inspection. The landlord claims the tenant damaged the exterior of the property by not maintaining it and not watering it and allowing contamination of the lawn area with dog wastes – the latter of which the landlord considers beyond the scope of reasonable wear and tear. The landlord provided several photos of what appears as a sparsely vegetated lawn area displaying some weed growth and indications resembling dryness of the lawn area. The landlord also provided several photos of what they claim is dog feces found within the lawn area. The tenant claims they owned 1 dog and that it occupied the yard of the property, but disagrees that they left dog feces on the property and that during their tenancy they routinely picked up their dog’s feces and that the soil area could not have been contaminated or that damage to the lawn occurred as a result of their dog. In support of their claims the landlord provided a letter from their realtor stating, in part, that prior to the tenancy the home was in new condition, and that the yard was well manicured and in good condition. The landlord further provided an estimate from a landscaping contractor to remedy the lawn area in the sum of $4225.76 - which includes the replacement and re-seeding of the soil areas. The landlord claims they have not rectified any of the purported damage to the lawn.

The landlord claims the rental unit’s fridge and stove were free of issues or damage at the start of the tenancy, and provided some evidence in support of this assertion. The landlord claims the tenant damaged a quantum of components of the fridge and the tenant damaged the stove’s lower front panel and cook top (scratched): all of which were beyond excess wear and tear. The landlord provided an estimate from an appliance contractor itemizing all the components requiring replacement in the fridge and stove in the sum of $2658.76 to bring the appliances to as new. The landlord claims they have not rectified any of the purported damage to the fridge and stove. In support of these claims the landlord also provided a letter from their realtor stating, in part, that prior to the tenancy the home was in new condition, and that the fridge and stove did not have cracks or scratches. The tenant acknowledged that one smaller area of the fridge liner cracked during the tenancy but that all other claims by the landlord respecting the fridge are the result of normal wear and tear. The tenant also acknowledged that the rental unit stove cook top received additional use and augmented wear on one burner, which they claim was also the result of normal wear and tear.

The landlord also seeks the cost for carpet cleaning as they claim the carpeting had a persistent odour of pet urine, despite their acknowledgement that the tenant had professionally cleaned the carpets at the end of the tenancy.

Analysis

Under the *Act*, a (the) party claiming damage or a loss bears the burden of proof.

Section 7 of the Act states as follows:

Liability for not complying with this Act or a tenancy agreement

> **7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

An applicant must satisfy each component of the following test established by **Section 7** of the Act:

1. Proof the damage or the loss exists,

2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant or landlord)* in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

On preponderance of all the evidence submitted, I find as follows:

Tenant's claim

I find the tenant has not proven their claims for compensation for a lack of air-conditioning or a cost associated with a deficiency in the operation of the irrigation system. As a result these items are **dismissed,** without leave to reapply.

Section 23 and 35 of the Act, and the corresponding Regulations of the Act, prescribe how condition inspections must be conducted; and, Sections 24 and 36 prescribe what will occur if the corresponding report requirements are not met. For example: Section 24 of the Act, in part, states as follows;

Consequences for tenant and landlord if report requirements not met

24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38 of the Act governs the administration of the tenant's deposits at the end of the tenancy – which can be found at www.rto.gov.bc.ca.

I find it was available to the landlord to conduct a mutual start and end of tenancy inspection in accordance with the Act and Regulations. I find the landlord did not, therefore their right to retain the security deposit and file a claim against it was extinguished and they became obligated to return any portion of the deposit to which the parties did not agree. I find the tenant provided their forwarding address for this purpose on August 03, 2012. Therefore even though the landlords filed a claim for damages and to retain the security deposit, their claim to the security deposit was extinguished and they did not have the right to retain the security deposit, and were obligated to return the deposit within 15 days of the date they received a forwarding address in writing, and since they failed to do so they are now required to pay *double* the security deposit to the tenant, as per Section 38(6) of the Act.

The tenant paid a deposit of $1000.00 and therefore the landlord must pay $2000.00 to the tenant, as well as interest in the amount of $4.43, in the sum of $2004.43. From this sum I deduct the amount of $62.01 to which the parties agreed, and find the landlord owes the tenant **$1942.42**.

Landlord's claim

In this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. Section 7 prescribes that the landlord must prove the existence of the damage or a loss, and that it stemmed directly from a violation or breach of the agreement or a contravention of the *Act* on the part of the other party, the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to show how they mitigated the purported damages and minimized the loss. The onus is on the tenant to show that the claim is not valid or the expenditure is unreasonable.

On preponderance of the evidence and on balance of probabilities respecting the landlord's claim for painting and the associated supplies, I find the landlord may have

discovered what they determined was unacceptable deficiencies in the rental unit walls after the tenant vacated. However, I find the landlord did not provide sufficient evidence to prove this deficiency was damage - beyond what would constitute reasonable wear and tear of a 4 year tenancy, for which the tenant is not responsible. As a result, **I dismiss** the painting and supplies portion of the landlord's claim, without leave to reapply.

I find that the portion of the tenancy agreement Addendum upon which both parties rely in respect to the yard maintenance, and maintenance of the irrigation system is ambiguous as to which party is responsible for the actual maintenance performance of both matters. The Addendum does not clearly indicate this duty, but it is clear that the owner / landlord is responsible for all associated expenditures of the yard maintenance and irrigation system. As a tenancy agreement is an instrument of the landlord, I find that any ambiguity in the agreement falls to the benefit of the tenant. In this matter the landlord has not proven that the tenant ought to have known to perform the yard and irrigation system maintenance and forward or charge the associated costs to the landlord. However, I find that the evidence in this matter is that the tenant owned a dog and that it occupied the yard of the residential property. On balance of probabilities I find that the presence of the dog contributed to the accumulation of the dog's bodily wastes and thus contributed to the deterioration of the yard, which the landlord has referred to as *contamination*. I do not accept the landlord's claim that the deterioration of the yard is wholly the responsibility of the tenant. On balance of probabilities, I find the tenant owes the landlord a quantum in compensation for the resulting damage to the soil areas of the yard, solely due to the dog's waste, to which I limit the landlord's claim to such compensation in the amount of **$1500,** without leave to reapply. In association to this claim, I find that on balance of probabilities, the tenant's dog also likely imparted an odor to the rental unit carpeting requiring augmented treatment. As a result, I grant the landlord's cost for carpet cleaning in the amount of **$140.00,** without leave to reapply.

In the absence of a start and end of tenancy inspection report I find that it is the responsibility of the landlord to prove the tenant damaged the fridge and stove during the tenancy and that the alleged damage is within the scope of beyond reasonable wear and tear. I also find that at no time during the hearing did the tenant dispute the landlord's claim that at the outset of the tenancy the rental unit was in good condition – for which reason they waived an inspection. In particular, the tenant did not dispute the landlord's evidence that at the start of the tenancy the appliances were *brand new*. The tenant's testimony is that they are responsibility for a small portion of the fridge damage and augmented wear on one stove cook top burner, but that all other alleged damage was not present. I further find the realtor's evidence in support of the landlord's claim states that the fridge and stove were free of scratches and cracks. As a result, on balance of probabilities, I accept the landlord's evidence that the fridge and stove were damaged beyond the scope of reasonable wear and tear. However, I find that it does not entitle the landlord to compensation for all repairs to bring the appliances to *as new*. The landlord was required to mitigate their claim to compensate for such matters as normal wear and tear and depreciation of the item. As a result, I grant the landlord

compensation for the damage to the fridge and stove; to which I limit such compensation in the amount of **$750.00,** without leave to reapply. I find the tenant owes the landlord the sum of **$2390.00.**

As both parties were in part successful in their claims and are equally entitled to recover their filing fee, I find these claims cancel out one another, and I therefore decline to grant such recovery to either party.

Calculation for Monetary Order

Landlord's award	$2390.00
Monetary Award to landlord	**$447.58**

Conclusion

I Order that the landlord may retain the security deposit and interest of the tenant, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **447.58**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 06, 2012

Residential Tenancy Branch