



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation reflecting double return of the security deposit / and recovery of the filing fee.

Both parties attended and/or were represented at the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Tenancy originally began in August 2010. Following the end of the initial fixed term, evidence includes a copy of the tenancy agreement entered into by the parties for a 12 month fixed term from August 1, 2011 to July 31, 2012. Pursuant to the tenancy agreement, monthly rent of \$3,250.00 is due and payable in advance on the first day of each month, and a security deposit of \$3,250.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Nearing the end of the fixed term, tenancy was extended by 1 month for the period from August 1 to August 31, 2012. While a move-out condition inspection report was signed by both parties on or about August 26, 2012, it was signed outside of the unit on the grounds of the property. The parties did not do a walk-through of the unit together at the time when they signed the move-out condition inspection report, and discussion about the condition of the unit focused principally on damage which both agreed had been sustained by a bathroom sink.

After making certain deductions from the security deposit in the total amount of \$1,850.00, the landlord issued cheque payment to the tenant in the amount of the balance of the security deposit of \$1,400.00 (\$3,250.00 - \$1,850.00). The tenant disagrees with the nature and amount of certain of the deductions made by the landlord. The respective applications for dispute resolution arise mainly out of the inability of the parties to reach a mutually agreeable settlement of the matter directly between them.

During the hearing the parties exchanged views on the circumstances surrounding various aspects of the dispute, and undertook to achieve at least some resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act speaks to the **Opportunity to settle dispute**. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

RECORD OF SETTLEMENT

- that the tenant will reimburse the landlord \$50.00 for cleaning required in the unit;
- that the tenant will reimburse the landlord \$97.00 for miscellaneous repairs required in the unit;
- that the tenant will reimburse the landlord \$44.80 for a final lawn cut.

Sub-total of landlord's entitlement agreed to: **\$191.80**.

Based on the documentary evidence and testimony, the various remaining aspects of the respective claims and my findings around each are set out below.

LANDLORD:

\$1,230.00: vanity sink / faucet replacement (labour + materials). During the hearing the tenant acknowledged responsibility for damage to one of what are two matching bathroom sinks. The total cost incurred by the landlord reflects the landlord's replacement not only the damaged sink and the attached faucet, but the matching sink /

faucet located adjacent to the one damaged. It is understood that the sinks were sufficiently old that replacing only the damaged sink, while at the same time maintaining the match, was not possible. In the result, two new sinks and two new matching faucets were purchased.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part:

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

While noting the landlord's concern to maintain the match between the two sinks and faucets, I find that the tenant ought not to bear the responsibility of replacing / upgrading both sinks / faucets. Accordingly, I find that the landlord has established entitlement to compensation in the limited amount of **\$450.00**.

\$560.00: removal of dead plants back / front yard. As to the tenant's responsibility for maintenance of the yard around the unit, the tenancy agreement provides simply that "Tenant will maintain the yard."

Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and under the heading – "PROPERTY MAINTENANCE," provides in part as follows:

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

While the landlord has submitted photographs in support of this aspect of the application, I find that reference in the tenancy agreement to the tenant's responsibilities around yard maintenance is very broad. Broad, too, are the guidelines in this regard, as above. Further, I find there is no reference to the condition of the yard in either the move-in or move-out condition inspection reports. Additionally, it is noted that the landlord testified during the hearing that the owner / landlord, who was not present at the hearing, is very particular about the condition of the grounds. In the result, I find that the landlord has established entitlement limited to a nominal award of **\$100.00**.

\$700.00: previous lawn care – deweeding. For reasons identical to those set out immediately above, I find that the landlord has established entitlement limited to a nominal award of **\$100.00**.

\$1,400.00: lawn rebuild – front and back. Further to the reasons set out immediately above, as the cost claimed arises from a quote, and as no expense has presently been incurred because of reasons related to the season of the year, this aspect of the claim is hereby dismissed.

\$50.00: filing fee. As the landlord has partially succeeded with this application, I find that the landlord has established entitlement to recovery of a portion of the filing fee limited to **\$25.00**, which is half the amount claimed.

Entitlement: \$866.80 (\$191.80 + \$450.00 + \$100.00 + \$100.00 + \$25.00)

TENANT:

\$6,500.00: double return of the security deposit (2 x \$3,250.00). Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the tenancy ended August 31, 2012. While the landlord repaid only a portion of the tenant's security deposit by cheque dated August 31, 2012, which was delivered by courier on September 4, 2012, the landlord

also filed an application for dispute resolution on September 12, 2012, which includes a claim on the security deposit. I find that as the landlord filed an application for dispute resolution within 15 days after the end of tenancy, the tenant's application for the double return of the security deposit must be dismissed.

\$100.00: filing fee. As the tenant has partially succeeded with this application, I find that he has established entitlement to recovery of a portion of the filing fee limited to \$50.00, which is half the amount claimed.

I order that the landlord retain \$816.80 (landlord's entitlement of \$866.80 minus tenant's entitlement of \$50.00) from the security deposit of \$3,250.00, and I order that the landlord repay the balance of the security deposit to the tenant in the amount of \$2,433.20 (\$3,250.00 - \$816.80). As the landlord has already repaid \$1,400.00 of the security deposit, I find that the net balance owing to the tenant is \$1,033.20 (\$2,433.20 - \$1,400.00), and I hereby issue a monetary order in favour of the tenant in that amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$1,033.20. Should it be necessary, this order may be served on the landlord, filed in the 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: December 4, 2012.

Residential Tenancy Branch