



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF
 MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and Tenant.

The Landlord filed on January 29, 2013, seeking a Monetary Order for damage to the unit, site or property, to keep all or part of the security and or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on November 7, 2012, seeking a Monetary Order for return of double his security deposit and to recover the cost of the filing fee from the Landlord for his application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Landlords and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Landlord be issued a Monetary Order?
2. Should the Tenant be issued a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: 11 photographs; list of damages being claimed; receipts for repair materials, labour, and cleaning.

The Tenant did not submit documentary evidence in support of his claim.

The following facts were not in dispute:

- The parties entered into a verbal month to month tenancy that began on August 1, 2008;
- Rent was payable on the first of each month in the amount of \$1,200.00 and on August 1, 2008 the Tenant paid \$600.00 as the security deposit;
- No move in or move out condition inspection report forms were completed;
- The rental house was built in approximately 1950 and has been owned by the Landlord A.E. since 1995 and occupied by the Landlords up to 2007;
- There was one tenancy prior to this Tenant moving into the unit;
- This tenancy ended August 31, 2012; and
- The Landlords did not issue a final notice for a move out inspection.

The Tenant stated that on September 19, 2012, he provided the Landlord with his forwarding address written on a piece of paper. The Landlord argued that the forwarding address was not handed to her over the fence until September 23, 2012. She noted that the Tenant moved out of their rental house and into the house next door.

The Landlords confirmed that they do not have the Tenant's permission to keep the deposit, they do not have an Order issued by the *Residential Tenancy Branch* authorizing them to keep the deposit, and they did not make an application to keep the deposit prior to January 29, 2013. The Landlords stated the Tenant damaged the house during the course of his four year tenancy and he did not properly clean the unit at the end of his tenancy so they have filed to recover the following costs:

- 1) \$155.50 (\$120.00 labour + \$35.50 materials) as supported by the invoices in evidence, to install base boards in the bedroom. They argued that near the beginning of the tenancy the Tenant told them he had installed laminate flooring. He removed the bedroom base boards, carpet and underlay and installed laminate flooring without their prior approval and without replacing the baseboards.
- 2) \$23.99 to replace the broken thermostat as supported by the invoices provided in evidence. They attempted to purchase a cheaper thermostat however had to return it and purchase one at over \$40.00. They advised that the furnace was replaced in approximately 1998 and the thermostat was new at that time. The Tenant never informed them that the thermostat was broken.
- 3) \$60.00 to replace two burned boards on the deck as supported by the invoice provided in evidence. The deck was newly constructed in 2006 and was burned by the Tenant's outdoor wood fireplace or deck heater.
- 4) \$246.76 (\$150.00 labour + \$96.76 materials), as supported by the invoice, to repair the buckled siding that had been damaged from the heat of the Tenant's outdoor fireplace / deck heater.
- 5) \$160.09 (\$60.00 labour + \$100.09 material), as supported by the invoices, to replace the bedroom door which they found installed in the outdoor unheated shed. When they attempted to re-install it in the bedroom they found the door

had warped and needed to be replaced. The door was original from when they purchased the house in 1995.

- 6) \$250.00 to replace three missing fridge crispers. This is an estimated cost based on verbal estimates received over the phone.
- 7) \$175.00 for cleaning the rental unit at the end of the tenancy. Their evidence supports that they paid much more for the cleaning but were only charging the Tenant for 2 ½ hours of cleaning.
- 8) \$68.99 to replace the missing bedroom blind. They state that there was a navy blue blind in the bedroom at the start of the tenancy which they purchased in 2007.
- 9) \$45.00 labour to cut a hole in the laminate flooring for the heating vent.

The Tenant confirmed that he “told” the Landlord he was installing laminate flooring at the beginning of his tenancy. He argued that the previous tenants had a dog and that the bedroom carpet was old and dirty so he had to remove it for his own comfort. He disputes the Landlords’ claims as follows:

- 1) He should not have to pay to install base boards because the ones he removed were old and damaged. He confirmed he did not install any baseboards after installing the laminate flooring.
- 2) He confirmed the thermostat broke during the tenancy; however, he does not know how or when it happened. He did not use the furnace to heat the old house after an oil leak occurred; he used electric heaters.
- 3) He accepts responsibility to pay \$60.00 to replace the deck boards. He confirmed he had a wood burning stove/ deck heater and that a few embers fell out onto the deck.
- 4) He disputes the claim for damage to the siding and argued that his stove/heater was almost 20 feet away from the siding. He argued this was an old house and was in really rough shape so he should not have to pay for the siding.
- 5) At first the Tenant claimed that he could not remember putting the bedroom door in the shed. When I asked how it would have gotten there he said he wasn’t trying to be difficult and changed his testimony to accept responsibility for the cost of the door.
- 6) The Tenant argued that he does not recall the fridge ever having crisper drawers at the beginning of his tenancy. Therefore, he refuses to pay for them to be replaced.
- 7) He claims he paid \$225.00 to have the rental unit cleaned, however he did not provide proof of that. On September 7, 2012, the Landlord told him that they were going to charge him for cleaning and he told them he would get the woman back to do the cleaning but the Landlord refused saying she had already hired a cleaner.
- 8) He does not recall a blind being in the bedroom so he disputes the claim.
- 9) The Tenant accepts responsibility for the costs to have the hole cut in the laminate flooring for the furnace vent.

In closing, the Landlord argued that the bedroom carpet was not old and that she had it steam cleaned just before the tenancy began. She confirmed that she had a conversation with the Tenant on September 5, 2012 and that he said he would hire someone to do the cleaning but it was too late because they had already hired someone to clean.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Landlords' claim

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenant has breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

Based on the evidence and testimony before me, and in the absence of move in or move out inspection reports, I find the Tenant to be responsible for damages in the amount of **\$619.58**. This amount is comprised of the following amounts and based on the following reasons:

- 1) **\$155.50** to replace and install baseboards which the Tenant admits he removed during his tenancy. The Landlords purchased used baseboards at a reduced cost; therefore, they are entitled to the full amount claimed.
- 2) **\$23.99** for the broken thermostat as the Tenant admits it broke during the tenancy and he did not inform the Landlords nor did he repair it.
- 3) **\$60.00** to replace two boards on the deck. The Tenant accepted responsibility for this item.

- 4) **Nil** to replace the siding as there is insufficient evidence to prove the age of the siding or to prove that the siding was damaged during the tenancy.
- 5) **\$160.09** to replace the bedroom door as accepted by the Tenant.
- 6) **Nil** for fridge crispers as there is insufficient evidence to prove they existed at the start of the tenancy.
- 7) **\$175.00** for cleaning the rental unit at the end of the tenancy. Despite the Tenant's offer to hire someone in the future, the facts support the unit was not left clean at the end of the tenancy (August 31, 2012), as required by the Act.
- 8) **Nil** for the bedroom blind as there is insufficient evidence to prove a blind existed at the start of the tenancy.
- 9) **\$45.00** to cut a hole in the laminate flooring as accepted by the Tenant.

As per the foregoing I find the Landlord has met the burden of proof and I award them damages in the amount of **\$619.58** plus the cost of their **\$50.00** filing fee.

Tenant's claim

In this case there were no condition inspection report forms completed, the tenancy ended August 31, 2012, and the Landlords received the Tenant's forwarding address in writing on September 23, 2012.

When a landlord fails to properly complete a condition inspection report, the landlord's right to claim against the security deposit for damage to the property is extinguished. That being said, the Landlord is not prevented from making a separate claim for damages, rather, it means they cannot retain the deposit for damages and must return the deposit in accordance with section 38 of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security deposit in full no later than October 8, 2012. They did not return the deposit and extinguished their right to file an application against the deposit.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord **must** pay the tenant double the security deposit [emphasis added].

Based on the above, I find that the Tenant has succeeded in proving their claim and I award them double their security deposit plus interest in the amount of **\$1,203.76** (2 x \$600.00 + interest of \$3.76).

The Tenant has succeeded with his application; therefore, I award recovery of the **\$50.00** filing fee.

Offset Monetary Awards:

Tenant's monetary award (\$1,203.76 + \$50.00)	\$1,253.76
LESS: Landlords' award (\$619.58 + \$50.00)	<u>669.58</u>
Offset amount due to the Tenant	<u>\$ 584.18</u>

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$584.18**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

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: February 08, 2013

Residential Tenancy Branch

