



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For landlord	MNSD MNR FF
For tenant	MNSD MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The landlord filed on November 07, 2012 for Orders as follows:

1. A monetary Order for unpaid rent – Section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

The tenant filed on January 16, 2013 for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A Monetary Order for damage or loss under the Act, *etc.* – Section 67
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given a full opportunity to present relevant evidence 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.

Issue(s) to be Decided

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

Burden of proof rests with the respective applicant.

Background and Evidence

The tenancy agreement start date is stated as May 01, 2011, although it effectively started April 15, 2011 for which the tenant paid pro-rated rent. The rent in the amount of \$1000.00 was payable in advance on the first (1st) day of each month as the *rental period*. At the outset of the tenancy the landlord collected a security deposit in the

amount of \$500.00 which they still hold in trust. The parties conducted mutual condition inspection reports at the outset and at the end of the tenancy.

The tenant vacated October 31, 2012, subsequent to notifying the landlord via an email on October 15, 2012 of their intention to vacate November 15, 2012. The tenant paid the final rent for the month of October 2012.

The landlord submits that the tenant did not provide the landlord with Notice to End in compliance with the Act, and as a result, the landlord seeks loss of revenue for November 2012 of \$1000.00. As well, the landlord seeks professional carpet cleaning costs as per tenancy agreement of \$84.00, and an NSF and late fee for the unpaid rent for November 2012.

The tenant claims that on September 25, 2012 they discovered an apparent water related problem (the water problem) within their bedroom closet which manifested as a moist wall, wetting 2 pairs of pants belonging to the tenant. The tenant testified the wall had some mould on its surface, the presence of small flies, and that the moisture area extended to a portion of the carpeting below. The water problem is purported by the tenant to have originated from a damaged waste pipe (vs. supply pipe) situated inside an adjacent wall. The tenant further claims that in the months leading to the discovery of the water issue they had not been feeling well – later determining as a result of their sensitivity to mould(s). The tenant immediately moved out of the bedroom area into another bedroom of the unit and notified the landlord of the problem. The landlord's contractor eventually determined the moisture issue was the result of a compromised pipe within the wall and on October 17, 2012 the landlord completed the required repairs, including re-painting. The tenant claims the landlord should have done more to rectify the matter, including air quality testing, and better mitigated the mould in the carpeting, which they did not. The tenant testified that the repair took over 3 weeks and that if it had not been for their initiatives to have the matter updated and resolved the problem would have lingered further than the eventual 23 days. Before the repairs were completed the tenant notified the landlord they were vacating. The landlord testified they attended to the problem in an expeditious and professional manner as was possible, given the reported layers of accountability.

The tenant claims they incurred a loss of wages as a result of having to vacate the problem bedroom as soon as they discovered the problem, for which they claim \$105.00. The tenant also seeks to recover the cost of 2 pairs of jeans in the claimed amount of \$150.00. In addition, the tenant seeks return of rent paid for the last 2 months of the tenancy in the amount of \$2000.00, and return of their original security deposit in full. The tenant further seeks costs paid for visits to a naturopathic clinic for issues they purport were related to the moisture problem- in the amount of \$1136.53, and moving costs of \$176.96.

Analysis

On preponderance of all the evidence submitted in this matter I have reached a Decision.

It must be noted that **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.

Effectively, when making a claim for damages or a loss under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages or loss requires that it be established that the damage or loss occurred, that the damage or loss was solely 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.

Landlord's claim

Sections 45, 52, and 53 of the Act prescribe the requirements for how a tenant may effectively end a tenancy. The entire contents of the Act can be viewed at www.rto.gov.bc.ca. In part, the Act states as follows,

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,

I find the landlord did not receive the tenant's Notice to End as prescribed by the Act in order for it to be effective to end the tenancy before November 30, 2012. As a result I grant the landlord the equivalent of one month's rent as loss of revenue for November 2012 in the amount of **\$1000.00**, without leave to reapply. I find the landlord has not provided evidence they incurred an NSF fee and I further find the payable rent for November 2012 was not paid and therefore cannot be considered late. As a result I **dismiss** these portions of the landlord's claim, without leave to reapply. I find the tenancy agreement states the tenant is responsible for professional carpet cleaning, and therefore I accept the tenant is responsible for the landlord's cost for this purpose in the amount of **\$84.00** – for a sum entitlement of **\$1084.00**.

Tenant's claim

I find the evidence in this matter does not sufficiently support that the landlord could foresee or have prevented the water problem. However, once reported to the landlord, I find that the tenant clearly incurred a loss of use of their rental unit from September 25, to October 17, 2012. I find the landlord may well have done what was required to the best of their ability, however I note the landlord's document evidence (e-mail dated October 04, 2012 -11:30 a.m.) indicates confusion over responsibilities, and a change in building management as the probable reasons for the landlord's response to the water problem and for not enacting repairs sooner. I find I prefer the tenant's evidence that the repairs took considerably longer than was required to assess and remedy the problem. As a result, I grant the tenant **\$500.00** for loss of use of the subject portion of the rental unit for the period September 25, to October 17, 2012, without leave to reapply. I do not accept the landlord is responsible for the tenant's loss of wages to move their bedroom, and I **dismiss** this portion of the tenant's claim, without leave to reapply. I find the tenant has not met the test within Section 7 of the Act: proving they took reasonable steps to mitigate their claim for replacement of 2 pairs of jeans. In this matter I find it was available to the tenant to have the garments professionally cleaned and in the alternative claimed those mitigated costs, but did not. As a result, I must **dismiss** this portion of their claim, without leave to reapply.

I find the tenant's evidence does not support their claim that the water problem, or the conduct and / or lack of action by the landlord in violation of the Act resulted in their *Medical Expenses*. I find all evidence related to this portion of the claim is insufficient and in the least is inconclusive to link the matters of this dispute to the tenant's *Medical Expenses*. As a result I **dismiss** this portion of the tenant's claim without leave to reapply.

While I accept the tenant's reasons for ending the tenancy I find that the tenant elected or chose to vacate the rental unit, and that the landlord is not responsible for their determination to do so. As a result, I **dismiss** the tenant's claim for moving costs, without leave to reapply. The tenant's entitlement is **\$500.00**.

As both parties have been partially successful in their claims, they are equally entitled to recover their filing fees, and as a result one fee effectively cancels out the other, therefore I decline to award recovery of either. The security deposit will be offset from any award made herein. Therefore,

Calculation for Monetary Order

Landlord's entitlement	\$1084.00
<i>Minus tenant's entitlement</i>	<i>-\$500.00</i>
Balance owed to landlord by tenant	\$584.00
<i>Minus security deposit held by landlord</i>	<i>-\$500.00</i>
Total Monetary Award for landlord	\$84.00

Conclusion

I Order that the landlord may retain the tenant's security deposit of \$500.00 in partial satisfaction of their claim and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$84.00**. 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: February 06, 2013

Residential Tenancy Branch

