



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD and FF

Introduction

This hearing was convened on the landlords' application of November 20, 2012 seeking a monetary award for damage to the rental unit, loss or damage under the rental agreement, authorization to retain the security and pet damage deposits in set off and recovery of the filing fee for this proceeding. While the application also claimed unpaid rent, the parties concurred that rent had been paid and the claim is based on the tenant's boyfriend presence in the rental unit and whether that presence constituted visits by a guest or an additional occupant.

As a matter of note, this tenancy was the subject of a hearing on October 4, 2012 on applications by both parties and which resulted in an Order of Possession for the landlord in support of a Notice to End Tenancy for cause. That appears to have continued the acrimony between the parties into the present hearing.

Issue(s) to be Decided

This matter requires a decision on whether the landlords are entitled to monetary award for the claims submitted and in what amounts.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable.

Claims for damage or loss under the legislation or rental agreement require that the claimant make reasonable effort to minimize the loss. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on June 1, 2012 and ended on October 31, 2012 under the Order of Possession issued on October 4, 2012. Rent was \$1,100 per month and the landlords hold a security deposit of \$550 paid at the beginning of the tenancy, and a pet damage deposit paid in September 2012.

The parties did not complete a move-in condition inspection at the beginning of the tenancy as required under section 26 of the *Act*. The landlord stated that he did inspect the unit in September 2012 when he collected the pet damage deposit but did not submit a copy into evidence.

The landlord stated that he had attempted to arrange a move-out condition inspection, including the prescribed Notice of Final Opportunity suggesting October 10, 2012 for the inspection, but the tenant did not respond. He stated that the tenant vacated on or about October 14, 2012, but did not return the keys until October 31, 2012, the end of tenancy date set by the notice. The parties agreed that October 2012 rent was paid.

The landlord submitted the following claims, supported by photographic evidence and some receipts, on which I find as follows:

Rent for additional occupant - \$500. The landlord claims he is owed \$100 for each of the five months of the tenancy because, in his words, the tenant had sublet the rental unit to her boyfriend. In fact, a sublet occurs when a tenant vacates a rental unit and rents the unit to a third party but remains responsible for the tenancy. The facts submitted by the landlord indicate at most an additional occupant and, at the least, a frequent guest.

The landlord stated, and submitted letters from neighbours to the effect that the tenant's boyfriend stayed in the rental unit beginning the week after the tenancy began without consent.

The tenant concurs that her boyfriend was a frequent guest, but maintained his own residence throughout her tenancy and did not use laundry or bathing/showering facilities in the rental unit as might have increased the landlord's utility bills.

The parties concur that the arrangement was a source of conflict between them – particularly on the issue of the boyfriend's cat and the tenant's boyfriend parking his truck - as it resulted in police attendance on occasions, including one in which the tenant's boyfriend is said to have assaulted the landlord.

The tenant had reminded the landlord of her right to entertain guests and, I am unable to determine definitively whether the tenant's boyfriend was an occupant or a frequent guest.

In addition, the doctrine of *res judicata* provides that a party may not bring an action against another that was dealt with in a previous hearing, or ought to have been addressed in a previous application. I find that the landlord ought to have raised this claim in his application that resulted in the hearing on October 4, 2012. Therefore, this claim is dismissed.

Replace shower head - \$51.36. This claim is based on the purchase of a new shower head at \$31.36 and \$20 for labour to install it. The tenant gave evidence that it had leaked from the beginning of the tenancy and that it had been wrapped in duct tape. She stated that she had drawn it to the landlord's attention and suggested the leak might be remedied by Teflon tape on the thread. I find that the landlord has not proven the shower head was damaged by the tenant and the claim is dismissed.

Sealants for sink drain etc. - \$12.26. The landlord makes this claim for materials to seal a drain and plumbing fixtures. I find these items fall within the landlord's duty for routine maintenance. This claim is dismissed.

Cleaning, painting and carpet shampooing - \$288. The landlord makes this claim for patching normal picture hanging holes in the wall, for general cleaning of the rental unit and shampooing of the carpets. The tenant stated she had spent six hours cleaning and had shampooed the carpets. As there had been a cat in the rental unit, I find that the landlord was entitled to ensure that carpets had been thoroughly cleaned and I find the balance of the claim to be reasonable, taking into account scuffs and dents resulting from the tenant moving. This claim is allowed.

Replacement of interior door - \$149.00. The landlord submitted a photograph of an interior door with a hole in it. The tenant acknowledged the hole but was adamant that it existed at the beginning of her tenancy and had been covered with a poster. In the absence of a move-in condition inspection report from the beginning of the tenancy, I am unable to validate this claim and find that the landlord has not met the burden of proof. This claim is dismissed.

Carpet replacement and disposal – \$1,175. The landlord claims \$975 for new carpeting and \$200 disposal fee for the original carpeting on the grounds that the tenant or the cat had caused a slice in the carpet. However, the claim is based on estimates and at the time of the hearing, nearly four months after the tenancy ended, the carpet has not been replaced. As it is questionable as to whether the carpet needs to be replaced and whether it will be in the near future, this claim is dismissed.

Entry door - \$149. The landlord also claims damage to the entry door but has provided no evidence to prove that repair or replacement has taken place. This claim is dismissed.

Filing fee - \$50. As the application has only marginally succeeded, I find that the landlord is entitled to recover one-half of his filing fee.

Security and pet damage deposits – (\$850). The landlord argued that the tenant's right to the security and pet damage deposits had been extinguished under section 36 of the Act by her failure to attend the move-out condition inspection. However, I find that extinguishment is offset by the landlord's failure to complete the move-in condition inspection at the beginning of the tenancy as required under section 24 of the *Act*. Therefore, as both parties breached the *Act*, I find the deposits are available for set off against the landlord's claims and the tenant's entitlement to return of the balance.

Thus, I find that accounts balance as follows:

Tenant's Credits		
Security deposit (No interest due)	\$550.00	
Pet damage deposit (No interest due)	<u>300.00</u>	
Sub total	\$850.00	\$850.00
Award to Landlord		
Cleaning, painting and carpet shampooing	\$288.00	
One-half of filing fee	<u>25.00</u>	
Sub total	\$313.00	- <u>313.00</u>
Total remainder of deposits for return to tenant		\$537.00

Conclusion

I hereby authorize and order that the landlord may retain \$313.00 of the tenant's security deposit and must return the balance of \$537.00.

Accordingly, the tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for **\$537.00** for service on the landlords.

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 22, 2013

Residential Tenancy Branch

