



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed on November 27, 2012 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for damage and loss – Section 67
3. An Order to recover the filing fee for this application - Section 72.

The landlord filed on January 29, 2013 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for Unpaid rent / utilities – section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, 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. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that despite their abundance of evidence only relevant evidence will be considered in the Decision.

Issue(s) to be Decided

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

Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed evidence in this matter is as follows. The tenancy began on June 24, 2012 as a written tenancy agreement. The rental unit is the upper portion of the residential house, of which the landlord occupies the lower part. The tenancy also included pets - a dog and 2 cats. The parties agree there was no move in or move out

mutual condition inspections conducted. At the outset of the tenancy the landlord collected a security deposit in the amount of \$500.00 of which the landlord retains \$230.88. During the tenancy the payable rent was in the amount of \$1200.00 due in advance on the 24th day of each month, plus utilities. The tenant vacated October 22, 2012 pursuant to the landlord's 2 Month Notice to End, and received the requisite compensation equivalent to the rent for the last month of occupancy.

Despite the written tenancy agreement, the tenant disagrees with a 1 page Addendum submitted by the landlord. The tenant agrees they spoke of the conditions within the Addendum at the outset of the tenancy, but did not sign an Addendum. Regardless, the tenant does not disagree with the landlord's claim they owe utilities of Shaw (cable and telephone), Fortis, and BC Hydro, to the end of the tenancy in the aggregate amount of \$325.48, although they dispute cable charges for the last 5 days of the tenancy (approximately \$10.00) as the tenant asked the landlord to end their cable service 5 days before vacating. The landlord testified they have calculated the tenant's utility to the end of the tenancy.

The parties further agree that the landlord was in receipt of the tenant's forwarding address in writing on October 23, 2012, and as a result the landlord returned a portion of the security deposit to the tenant in the amount of \$269.12, which the tenant received on November 7, 2012. The tenant seeks return of the balance of the security deposit and compensation of double the deposit under the Act.

The tenant submits that since the outset of the tenancy the landlord was generally intrusive and intentionally acted to disturb the tenant. The tenant claims the landlord would text the tenant with reminders and would leave notes and complaints for the tenant on the (mutual) dryer, and slam doors in seeming response to the tenant's behaviour above them. In addition the tenant claims the landlord behaved rudely toward them and dismissed their wishes. They also perceived the landlord intended to threaten them by leaving a knife and rope on the (mutual) dryer. In turn the landlord claims they perceived the tenant intended to threaten them by leaving a 'plastic green skull' on the (mutual) dryer and a plastic "danger" sign propped up in the garage amongst the tenant's belongings. Neither party acknowledges they intended threats. Both parties acknowledged they mutually endured a progressively acrimonious relationship during the 4 month tenancy – with both parties claiming spiteful behaviour from the other, and both relayed testimony of progressively spiteful conduct toward one another. In part, the tenant relayed their version of an incident in the latter month of the tenancy (September 30, 2012) in which the conduct of the landlord was reportedly verbally abusive and the episode came perilously close to assault. The tenant submitted many examples of conduct by the landlord which they perceived or assumed to have been intentional or directed at them. The landlord denied the tenant's assertions. The tenant seeks compensation for loss of quiet enjoyment during the 4 month tenancy in the amount of \$1200.00. The tenant further seeks compensation of \$40.00 for ending their tenancy one day early.

The landlord seeks recovery of the aforementioned utility charges, and in addition claims that the tenant vacated, leaving the carpeting in the rental unit soiled and with a strong odor of pet urine. The landlord claims they had to clean and deodorize the carpets twice and further had to replace the underlay to mitigate its condition. The landlord provided evidence for the carpet cleaning and replacement of the underlay, as well as a statement from the *tenant's* own movers stating the condition of the rental unit upon vacating the tenant as "unclean", with large stains in the carpeting and, "very smelly to the point that our moving crew tried to walk away from the move". It is noted the moving date for this evidence is *October 14, 2012*. The tenant testified they used their domestic carpet cleaner to shampoo the carpets at the end of the tenancy – providing photographs of the carpeting.

Analysis

The onus is on the respective parties to prove their claims, on balance of probabilities. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

The Act prescribes that if a landlord does not perform the required condition inspections at the start and end of the tenancy, the landlord's right to claim against the security deposit are extinguished. In addition, **Section 38(1)** of the Act provides as follows

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit in full, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

As the landlord's right to claim against the security deposit were extinguished, the landlord was obligated under section 38 to return the entire original amount of \$500.00. Therefore, the amount which is doubled is the original \$500.00 of the deposit. As a result I find the tenant has established an entitlement claim of \$1000.00, from which I deduct the returned \$269.12, for an award of **\$730.88** for this portion of their claim.

I find the tenant vacated in accordance with the Notice to End and received the prescribed compensation equivalent to 1 month's rent for the rental period comprised of the last month. I find the tenant elected to end the tenancy early by one day, but their choice does not automatically entitle the tenant to further compensation or a refund of rent. Rent applies to the *rental period* of the tenancy, which in this tenancy is *monthly*. If a tenant elects to not utilize the entire month they are not entitled to a refund for the unoccupied portion of the rental period. As a result, I **dismiss** the tenant's claim of \$40.00 for vacating 1 day early.

I find the evidence supports the parties were likely mutual antagonists at disrupting the quiet enjoyment of the other. However, Section 28 of the Act does not extend a right to quiet enjoyment to the landlord. I further find that the bulk of the tenant's evidence in respect to a breach by the landlord of their right to quiet enjoyment is based on their own assumptions and perception of the conduct of the landlord through a fog of acrimony and distrust between the parties from the outset of the tenancy. Commonly, perception is sometimes referred as *being everything*, but perception is not necessarily evidence. I do not consider all incidents the tenant perceived egregious as sufficiently so as to be unreasonable. None the less, I accept *some* of the tenant's evidence the landlord breached the tenant's right to quiet enjoyment. On preponderance of the submissions in this matter, I find the tenant is entitled to compensation for incidents on the evidence dates of June 29, undated incident in July, August 11, August 27, September 25, September 27, and September 30, 2012 in the limited amount of \$20.00 per incident - in the sum of **\$140.00** - for a total entitlement of **\$870.88**, without leave to reapply.

Landlord's claim

I find the parties agree the tenant owes the landlord a share of utilities in the sum amount of **\$325.48** and I grant this amount to the landlord. I accept the evidence of the landlord they did not charge the tenant for utilities further than in accordance with the tenancy agreement, and only to the end of the tenancy and therefore I find the tenant has not been over-charged or owed compensation.

On the balance of probabilities, I do not accept the tenant's evidence, that having housed 3 four-legged pets and having cleaned the rental unit carpeting with a domestic carpet cleaner, they left the carpeting in the unit *reasonably clean*, and free of pet odors. On the evidence and on balance of probabilities I prefer the evidence of the landlord that the carpeting in the unit was left soiled, inclusive of pet urine stains, and the landlord had to expend costs to clean, deodorize and remediate the condition of the carpeting following the tenancy. As a result, I grant the landlord their damage claim costs for cleaning the carpeting in the sum amount of \$266.88, and replacement of underlay in the amount of \$180.00 for a total entitlement of **\$446.88**, without leave to reapply. **I dismiss** the landlord's claim for general cleaning of the rental unit (\$120.00) given the evidence that the cleanliness of the rental unit was not inspected at the end of the tenancy. As a result, the landlord's total award is for **\$772.36**, without leave to reapply.

As both parties are entitled to their filing fees, these mathematically cancel each other out. The security deposit is factored and offset in the tenant's award. Therefore:
Calculation for Monetary Order,

tenant's total award	\$870.88
landlord's total award	- \$772.36
Total of monetary award for tenant	\$98.52

Conclusion

The parties' respective applications, in part, have been granted. The balances of their claims are **dismissed**, all without leave to reapply.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$98.36**. 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: March 06, 2013

Residential Tenancy Branch

