



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, MNDC, FF

Introduction:

This hearing dealt with applications filed by the tenant and by the landlord.

The tenant seeks:

1. Monetary Order for return of pet damage or security deposit pursuant to Section 38; and
2. Recovery of the filing fee paid for this application pursuant to Section 67.

The landlord seeks:

1. A monetary Order for compensation for damage or loss;
2. An Order to be allowed to retain the security deposit pursuant to Section 38; and
3. Recovery of the filing fee paid for this application pursuant to Section 67.

Both parties attended the hearing. Neither party requested an adjournment and I am satisfied that both parties have had notice of the other's claims.

Issues(s) to be Decided

Whether either party is entitled to the Orders sought.

Background and Evidence

This tenancy began on September 1, 2011 and ended on September 30, 2012. Rent was fixed at \$700.00 per month and the tenant paid a security deposit of \$250.00 and a pet deposit of \$250.00 on August 1, 2011.

The landlord states that the tenant attended the move-out inspection but only stayed for 16 minutes, storming out in a rage because she did not like the damage because she did not agree with the damage the landlord was pointing out. The landlord says he expected her to return to complete the report but she did not do so. The landlord submits that being present for only 15% of the time required to complete the move-out inspection is a failure to participate in which case the Act says the tenant has forfeited her deposit. The landlord says that during the 16 minutes in which the tenant was in attendance at the move-out inspection the discussion surrounded an 18 mm deep and 20 mm in diameter hole in the oak laminate dining room floor. The landlord notes that the move-in inspection shows that no hole existed previously. The landlord believes the damage was caused by the tenant's boyfriend parking his mountain bike in this location.

With respect to the laminate floor damage, the landlord says the floor was laid in 2006 and the same product is no longer available. The landlord says the entire 112 sq. foot floor must therefore be replaced. With regard to precedent for allowing for such a claim even though the entire floor has not been damaged, the landlord refers the Arbitrator to a Judge Judy ruling made 13 January 2013.

The landlord submits that in addition to the floor damage there was an overall lack of cleaning at move-out. The landlord says the floors were dirty with dust bunnies, cobwebs on the ceiling, Scotch tape left on 4 windows where the tenant had fitted cardboard blinds and a rotten banana wedged behind the freezer shelf. The landlord says that four of the newly installed window ledges were left scratched, chipped and damaged; one ledge now sports a crater 1.5 mm deep and 20 mm wide.

The landlord says that to date the tenant has not returned the key and she left a mattress at the rental unit which the landlord had to store until it could be disposed of.

The landlord submitted that drinking cold water is unhealthy and therefore he did not hook up the cold water dispenser in the fridge. The landlord says the tenant was informed the dispenser was non-operational however the "flapper" for the cold water dispenser in the fridge is broken. The landlord believes that someone was attempting to make it work and became impatient with it.

The landlord says that the tenant fitted oversized Venetian blinds to 2 bedroom windows damaging the new decorative window frames in four places. The landlord says the tenant left 8 burnt out light bulbs and various marks on the walls including mountain bike tire marks. The linen closet door was broken. It will not open or close and the plaster is damaged on the wall near the top of the broken door.

The landlord says that in June 2012 the tenant's sock became lodged in the washing machine water pump. The landlord says that this damage was caused by the tenant's negligence in not using small washing bags.

The rental unit was partially furnished and the landlord says the tenant broke the window and shelf in the buffet. Further there was a broken light fixture near the main door. The glass rotary plate in the microwave is missing.

The landlord says the tenant left a queen sized mattress behind which had to be stored until the Salvation Army could attend to pick it up.

The landlord states further that they are claiming additional rent for the periods when the tenant's boyfriend stayed and exceed 3 days/night stays allowed.

Finally the landlord is claiming a one month loss of revenue. The landlord says she had a new renter lined up to move in on October 1, 2012 but had to cancel the tenancy due to the condition of the rental unit.

The landlord claims the following sums:

General cleaning: Materials \$5.00; labour \$160.00	\$165.00
Repair and paint window ledges: Materials \$10.00; labour \$40.00	50.00
Replacing dining room laminate flooring: Materials \$148.69; labour \$200.00	348.69
Freezer door repair	111.98
Replace dishwasher	901.59
Repair bedroom window frames: Materials \$10.00; labour \$40.00	50.00
Replace door lock (key not returned): Materials \$26.85; labour \$20.00	46.85
Replace 8 burned out light bulbs	25.00
Repaint dining room: Materials \$49.72; labour \$40.00	89.72
Repaint lounge (living room) and hall; materials \$99.43; labour \$80.00	179.43
Repaint bedroom: Materials \$43.94; labour \$60.00	103.94
Repair close door: Materials \$21.58; labour \$50.00	71.58
Repair/re-plaster damaged walls: Materials \$3.00; labour \$10.00	13.00

Replace washing machine pump	194.81
Replace glass window and shelf in buffet: Materials \$27.01; labour \$30.00	57.01
Fill scratches in dining room wall: Materials \$2.00 labour \$10.00	12.00
Repair broken light fixture: Materials \$2.00, labour \$5.00	7.00
Store queen sized mattress for 3 months while awaiting Salvation Army pick up	30.00
Replace missing microwave plate	43.61
Boyfriend staying 47 days @ \$7.50 per day	352.50
Loss of October revenue	700.00
Total	\$3553.71

The tenant disagrees with most of the landlord's claims.

The tenant submits that the move-in walk through was performed quite awhile prior to her move in date and the landlord's furniture was still in the house at the time and the house had not yet been cleaned. The tenant says the landlord is a friend of her "Omi" (grandparent). Because of this connection the tenant says she trusted the landlord. She believed the landlord would have the rental unit cleaned prior to move in and she did not believe the landlord would attempt to conceal damage behind the furniture that was still in the rental unit.

The tenant says that when she moved in she spent a few days cleaning. The tenant says she started taking pictures of the mess but then decided to ask the landlord to come to the house. The landlord attended along with the tenant's Omi the first week. The tenant says the landlord advised that her daughter, who lives in the suite downstairs, would come up to clean but this never happened. The tenant says she did not complain again because she did not want to strain the friendship between her Omi and the landlord.

The tenant agrees that sometime during the summer the washing machine would not drain after the rinse cycle so she called the landlord who had a repairperson attend. The tenant says the landlord informed her that she was responsible for the damage and must pay \$260.00 for repairs. The tenant says she did not agree that the damage was her fault and she did not pay. The tenant says that if she believed it was her fault she would have had her brother take a look at it because he is a plumber. Further that

before she would pay \$260.00 for repairs she would have looked for a new machine as this one was old and not worth the repair costs.

The tenant says that during the course of her tenancy the landlord had contractors come into the suite several times to make repairs. Further, the tenant says that she was suspicious that the landlord was entering her suite at other times without her permission. The tenant says that she installed software on her computer and recorded a video of the landlord entering her suite. The tenant says she reported this to the police but they advised her that pursuing the matter would likely make things worse and she should just give her notice and vacate. The tenant says moving was an option at the time because she was studying for her final exam to become a Chartered Accountant. However, the tenant says that when the landlord served her with a Notice to End Tenancy for Cause she decided she must vacate due to the stress but she advised the landlord she would dispute the landlord's claims of cause. The parties eventually signed a mutual agreement to end the tenancy on August 25, 2012 effective September 30, 2012.

The tenant says that during her tenancy the landlord retained some of her own goods in the spare room along with leaving most of her furnishings in the rental unit. The tenant says the landlord did not wish to pay storage therefore the tenant stored her own furnishings at a storage unit located on her father's property. The tenant says she did not wish to use the landlord's mattress and she spent \$1,000.00 purchasing a brand new mattress. The tenant says that she stored the landlord's mattress at her father's storage unit and had it returned when she vacated. The tenant says there was never a microwave plate in the microwave and no one used the water dispenser in the fridge because it was not operational.

The tenant admits her boyfriend's bike may have caused some scratches but says the area where the hole is in the laminate flooring was covered up with the landlord's goods and it is possible that the hole was there prior to her move in. The tenant admits she may have caused scratches in one of the bedroom window sills as well but says the other bedroom was not open to use as it was being used by the landlord.

The tenant says the dishwasher was 10-12 years old and damaged. The tenant denies any responsibility for the dishwasher.

The tenant says that on September 18, 2012 the landlord had contractors come to the home to do some work and the landlord needed to move some of her things out of the spare room. The tenant says that this was when the closet door was damaged.

The tenant submitted photographs showing the rental unit at move in and notes that the rental unit was cleaner at move-out.

The tenant agrees that she forgot to return the keys because she was upset at the walkthrough however notes the landlord never reminded her to do so. The tenant agrees she did not replace light bulbs saying she was not aware she had to do so. The tenant says she would have replaced the light fixture and the buffet shelf but was not given an opportunity to do so.

Analysis

With respect to the tenant's claim to recover double the security deposit, the evidence shows that she supplied her forwarding address to the landlord in February 2013 and I am satisfied that the landlord filed her application within the time limits allowed under the Act and I therefore dismiss the tenant's claim for recovery of double the deposit.

With respect to the landlord's claim that the tenant has forfeited her deposits by not attending the move-out inspection, the evidence shows that the tenant did attend. Even though she may have left prior to the completion of the inspection, I am not satisfied that this was a complete failure to comply with the Act such that her deposits should be forfeited.

The tenant admits that her boyfriend's bike may have been responsible for some scratches and I will allow some sums with respect to the flooring and walls in this regard. Likewise, the tenant has admitted that she did not return the keys as was her duty to do so and I will allow for the cost of changing the locks as well.

Where the tenant does not agree to the claims made the landlord bears the burden of proving these claims. Where the landlord's version of events differs from the tenant's version, the landlord must bring sufficient evidence to prove her version correct. Given this standard of proof I find that the landlord has failed in a number of areas.

I find that the landlord has failed to show that the tenant did not clean the rental unit. While cleaning is the responsibility of a tenant at move-out the standard of cleaning is a reasonable standard and this may not be the standard required by the landlord. I do not find "dust bunnies" and ceiling cobwebs or a banana left in the freezer to be major cleaning flaws. However, it does suggest a certain lack of attention to cleaning and I will therefore allow \$75.00 for the additional cleaning that may have been required.

With respect to the damage to the rental unit the evidence shows that the landlord left her furnishings in the rental unit and that the move-in inspection took place while these furnishings were present. It is difficult to perform a thorough move-in inspection in these circumstances and it may well be easy to overlook damage. Further, I accept the tenant's undisputed testimony that the landlord maintained goods in a spare room. Having done so it is reasonable and probable to conclude that the landlord may have come and gone from the rental unit from time to time to retrieve and return goods during which time she might have caused some of the scratches and other damages claimed. For these reasons it is difficult to ascertain who may have caused some of the damage now claimed. As a result I will dismiss the landlord's claims for repairs not admitted by the tenant.

With respect to the washing machine, the fridge water dispenser and the dishwasher, I find that the landlord has failed to supply sufficient evidence to prove that the tenant was somehow negligent in her use of these items such that she damaged them and they required repair. In particular, I do not find that washing socks in a washing machine without a protective bag to be negligent. These claims are dismissed.

With respect to the claim for the mattress storage and the microwave plate, the versions of these issues differs and the landlord has failed to bring sufficient evidence to show that it was the tenant's mattress left behind or that the microwave had a plate when this tenancy began. This claim is dismissed.

With respect to the landlords claim for the additional rent for the boyfriend having stayed, this claim is dismissed. The landlord has failed to bring sufficient evidence to show that it was agreed that additional charges would be levied and/or to show how often the tenant's boyfriend did stay such that any additional charges should be awarded. This claim is dismissed.

With respect to the claim for loss of rental revenue for October I find that the landlord has failed to prove that the rental unit was in such a poor condition it could not be re-rented for October. In fact the landlord's own evidence shows that the landlord did have a tenant ready to move in on October 1, 2012 which tenancy the landlord declined. This claim is therefore dismissed.

Overall I will allow the following sums:

General cleaning	\$75.00
Repair and paint window ledges:	50.00

Materials \$10.00; labour \$40.00	
Laminate flooring scratches	50.00
Freezer door repair	0.00
Replace dishwasher	0.00
Repair bedroom window frames: Materials \$10.00; labour \$40.00	50.00
Replace door lock (key not returned): Materials \$26.85; labour \$20.00	46.85
Replace 8 burned out light bulbs	25.00
Repaint dining room: Materials \$49.72; labour \$40.00	0.00
Repaint lounge (living room) and hall; materials \$99.43; labour \$80.00	50.00
Repaint bedroom: Materials \$43.94; labour \$60.00	0.00
Repair closet door: Materials \$21.58; labour \$50.00	0.00
Repair/re-plaster damaged walls: Materials \$3.00; labour \$10.00	0.00
Replace washing machine pump	0.00
Replace glass window and shelf in buffet: Materials \$27.01; labour \$30.00	57.01
Fill scratches in dining room wall: Materials \$2.00 labour \$10.00	12.00
Repair broken light fixture: Materials \$2.00, labour \$5.00	7.00
Store queen sized mattress for 3 months while awaiting Salvation Army pick up	0.00
Replace missing microwave plate	0.00
Boyfriend staying 47 days @ \$7.50 per day	0.00
Loss of October revenue	0.00
Total	\$422.86

As the landlord has been only partially successful in her claims and both parties have paid a filing fee to pursue their claims, I decline to award either party recovery of their filing fee.

The landlord holds pet and security deposits totalling \$500.00. I will allow the landlord to retain the sum of \$422.86 from those deposits and return the sum of \$77.14 to the tenant forthwith.

Conclusion

The tenant is provided with an Order in the above terms. This is a final and binding Order enforceable as any Order of the Provincial Court of British Columbia.

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: April 15, 2013.

Residential Tenancy Branch

