



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNSD and FF
Tenant: MNSD and FF

Introduction

This hearing addressed applications by both the landlord and the tenant.

The landlords' application of February 15, 2013 sought a monetary award for cleaning and costs of repair of the rent unit and recovery of the filing fee for this proceeding. In addition, as the timing and nature of the landlord's application made it clear that he intended to request authorization to retain the security and pet damage deposits in set off, I have exercised the discretion granted under section 64(3)(c) to amend his application accordingly.

The tenant's application of February 13, 2013 sought an order for return of her security and pet damage deposits in double and recovery of the filing fee for this proceeding.

Issue(s) to be Decided

The landlord's application requires a decision on whether he is entitled to a monetary award for claims submitted and authorization to retain the security and pet damage deposits in set off against the balance owed.

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. The burden of proof falls to the applicant.

The tenant's application requires a decision on whether she is entitled to return of the security and pet damage deposits and whether the amount should be doubled.

Background, Evidence and Analysis

This tenancy started on February 1, 2012 under a fixed term rental agreement set to end on January 31, 2013. Rent was to be \$1,500 per month and the tenant paid security and pet damage deposits of \$750 each at the beginning of the tenancy.

As a matter of note, adjudication of this matter was made somewhat more difficult by the lack of move-in and move-out condition inspection reports. However, the rental building was brand new at the beginning of the tenancy, and the tenant gave evidence that a list of deficiencies had been remedied by February 28, 2013.

Each party claims the other is responsible the failure to complete the move-out condition inspection report. The tenant stated that the landlord had posted the notice of final opportunity to do the inspection after she had moved, and the landlord had used the previously scheduled time to show the rental unit to prospective tenants.

Tenant's Claim

As to the tenant's claim, I note that the tenant made application on February 13, 2013 and the landlord applied on February 15, 2013. At this was a fixed term rental agreement to January 31, 2013, I find that to be the end-date of the tenancy although the tenant vacated four days earlier at her discretion.

Section 38(1) of the *Act* provides that a landlord must either return security and pet damage deposits or file for dispute resolution to claim against them within 15 days of the latter of receipt of the tenant's forwarding address or the end of the tenancy, subject to an order to return the amounts in double under section 38(6) of the *Act* for non-compliance.

I find that the landlord's application was made on time. Therefore, the deposits remain available for set off on the landlord's application and the tenants claim for their return in double is dismissed without leave to reapply.

Landlords' Claims

As a matter of note, the landlord's claims included those for costs of photography and postage as evidence preparation costs for which there is no reimbursement provision under the *Act*. Such expenses are deemed to be costs of doing business.

The landlord has submitted a very large number of photographs and an all encompassing receipt from a single service provider in support of his claims and on which I find as follows:

Change locks for entry doors - \$90. The parties disagree as to whether the landlord gave consent that the tenant could return the keys to the complex sales office, which, in fact, the tenant's sister did by attaching the envelope to the door. The landlord stated that the envelope had been found but that it had been opened and the keys were not in it. I find that the tenant was responsible for ensuring that the keys were returned to the landlord and that their loss by attaching them to a door, accessible by others unknown, led to the foreseeable and preventable loss. This claim is allowed.

Garbage removal - \$80. The tenant agrees with this claim and it is allowed.

Cleaning appliances and cupboards - \$250. The tenant acknowledged the need for cleaning these items; however, I note that the claim is for eight hours labour and that the normal rate for such work is \$20 per hour. Therefore, I reduce the award on this claim to \$160.

Repair toilet lever - \$60. The tenant concurred with this claim and it is allowed.

Drywall repair and painting \$1,250. The tenant acknowledged that she had placed a number of stickers and some other minor damage, but challenged the need to repaint the entire rental unit. The rental unit was one year old at the end of the tenancy and standard depreciation tables place the useful life of interior paint at four years. Therefore, I reduced the award on this claim by one-quarter for that reason and a further quarter for normal wear and tear and award \$625 on the claim.

Carpet cleaning - \$165. The tenant concurred with this claim and it is allowed in full.

Repair dent in garage door - \$80. That there is a dent in the garage door was substantiated by the landlord's photograph of the door and the tenant's car parked backed toward it.

However, the tenant denies having damaged the door and, in the absence of corroborating evidence to the contrary, I find it has not been proven that she did so. This claim is dismissed.

Replace missing door shelf in refrigerator - \$30. The tenant stated that she had neither broken nor taken the shelf in question and I am left with some doubt as to the claim. It is dismissed.

Replace missing exhaust fan filter - \$30. The tenant stated that she had no knowledge of the exhaust fan filter and I find there is some doubt as to whether she is responsible for its absence. The claim is dismissed.

Repair scratches in hardwood floor - \$25. The tenant acknowledged that a small depression had been left in the floor where her couch had been placed, but she was not aware of the scratch. On the basis of photographic evidence, I will allow this claim, but reduce the award to \$25 in consideration of some degree of normal wear and tear..

Repair damaged baseboard at stairwell - \$45. The tenant acknowledged this damage and the claim is allowed.

Vacuum hardware floors to remove dog hair - \$20. The tenant conceded that her Golden Retriever is prone to shedding and agreed with this claim.

Mail box key – \$32.48. The key in question is to a community mail box owned by Canada Post. The tenant acknowledges that she did not return the key to the landlord because she had obtained it from the post office using her own identification and that it was replaceable at no charge. In the absence of a receipt to support this claim, it is dismissed.

Loss of rent - \$750. The landlord claims loss of rent for two weeks because of the condition of the rent unit when it was returned to him. I note that the tenant gave him vacant possession four days earlier and I am not persuaded that the needed work was the sole cause of the loss. In addition, the landlord did not indicate on his application that he was seeking a claim in loss or damage under section 7 of the Act. This claim is dismissed.

Filing fee - \$50. Having found substantial merit in the landlord's application, I find that he is entitled to recover the filing fee for this proceeding from the tenant.

Security and pet damage deposits - (\$1,500). As empowered by section 72 of the Act, I authorize the landlord to retain the amount owed to him from the tenant's security and pet damage deposits.

Thus, I find that accounts balance as follows:

Tenant's credits		
Security deposit (No interest due)	\$ 750.00	
Pet damage deposit (No interest due)	<u>750.00</u>	
Sub total	\$1,500.00	\$1,500.00
Award to landlord		
Change locks for entry doors	90.00	
Garbage removal	80.00	
Cleaning appliances and cupboards	160.00	
Repair toilet lever	60.00	
Drywall repair and painting	625.00	
Carpet cleaning	165.00	
Repair scratches in hardwood floor	25.00	
Repair damaged baseboard at stairwell	45.00	
Vacuum hardware floors to remove dog hair	20.00	
GST on allowed amounts	152.40	
Filing fee	<u>50.00</u>	
Sub total	\$1,472.4	<u>- 1,472.40</u>
Balance owed to tenant by landlord		\$ 27.60

Conclusion

The tenant's application is dismissed on its merits without leave to reapply.

The landlord is awarded a total of \$1,472.40 which may be retained from the security and pet damage deposits, and he must return the remainder \$27.60 to the tenant.

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$27.60 for service on the landlord if the amount is not paid within a reasonable time.

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: May 08, 2013

Residential Tenancy Branch

