



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL RES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of their monetary claim and recover the filing fee from the tenant. The matter was originally heard starting July 16, 2013 and adjourned from the original date in order to allow both parties to submit additional evidence to me and one another.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding both hearing dates both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the parties each received the contents of one another's initial and subsequent evidence. The tenant provided a digital recording transcript. The landlord provided their original evidence which they subsequently augmented, and concurrently amended their claim to now additionally include a new claim for *painting* in the amount of \$2047.50.

Preliminary Matters

The tenant testified they filed an application for loss which has been scheduled for October 18, 2013. I reviewed the tenant's late application details with both parties and determined the application was materially unrelated to the landlord's application in this matter including the style of cause; and therefore declined to cross the parties' applications.

It must be noted that a claim for *painting* in the amount of \$2047.50 was not part of the landlord's original application, nor advanced in the original application details, or advanced in testimony in any way referenced in the initial hearing. The landlord claims they submitted an invoice for painting in their original application, but inadvertently failed to include it in their several iterations of monetary claims. It must further be noted that the landlord also included other invoices and claims of damages in their original application for which they did not and have not claimed relief. I find the landlord's original claim on application to be *the landlord's claim for this matter*, and as a result, I find the landlord's amendment to their application *inadmissible* and it will not be considered. It may be available to the landlord to file a new claim in respect to their claim for *painting*.

The landlord's application filed April 16, 2013 proceeded on the merits.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The relevant evidence in this matter is that the tenancy started April 01, 2012 as a fixed term tenancy with an end date of March 31, 2013. At the outset the landlord collected a security deposit of \$625.00 which they hold in trust. It is undisputed by the parties the tenant returned the keys to landlord April 03, 2013, although the tenant claims they vacated the unit the previous day. It is further undisputed the parties mutually conducted start and end of tenancy inspections – recorded, and signed by the parties. The landlord claims that within 2 weeks they forwarded a copy of the condition inspection report (CIR) to the tenant by e-mail and also mailed it to them to the address the tenant provided and confirmed in the hearing. The tenant claims they did not receive it, but testified they now have it in their possession. The landlord provided evidence the tenant responded to the *e-mailed* CIR document. The tenant claims the landlord's CIR has inclusions in the *move out* section, which were not present or entered or discussed on the day of the move out inspection and they accuse the landlord of fabricating some of the contents in the CIR. The tenant testified they would not have signed (CIR signed by male tenant) the CIR under the circumstances now presented by the landlord.

The landlord orally amended their claim at the initial hearing date – claiming per diem rent for only 2 days in the amount of \$83.33.

The landlord claims handyman services in the amount of \$900.00 for *interior repairs*. In support the landlord submitted invoices from their handyman services contractor totalling \$1493.64 – all which were dated after the tenancy ended and were for an array of repairs, some painting, maintenance items, and what can be described as improvements to the rental unit. The landlord relies on the CIR and photographs of the purported damages as evidence for their claim.

The tenant testified the landlord fabricated their claims and that the move out CIR, as they signed it, indicated minor issues within the realm of normal or reasonable wear and tear, for which they should not be liable. The tenant claims some of the *comments found in the landlord's CIR evidence* were not in the CIR when they signed it and that some damage the landlord is claiming was present at the outset of the tenancy. The tenant claims, for example, the landlord's claimed damage to the kitchen backsplash tiles was there at the outset of the tenancy but it was not recorded on the move in CIR. The landlord was randomly asked about their first photograph (#1) into evidence: a claimed hole in the master bedroom door. The landlord testified this purported damage was not included in the CIR before the parties signing of it as it was not noticed during the inspection. The tenant also claims they were not aware of many of the deficiencies the landlord included in an 'Attached List' to the CIR, which was not part of the CIR on April 03, 2013. It is noted the Attached List is a detailed and typed / prepared list.

The landlord further claims \$330.00 for cleaning the unit. They provided an invoice from a cleaning contractor and photographs depicting areas about the rental unit appearing unclean with scattered debris and soiling apparent. The tenant disputed the claim – testifying they cleaned the unit before vacating and that it was a limited issue at the move out inspection between the parties. Albeit, both parties testified the Police were present to keep the peace during the parties' move out inspection.

The landlord claims \$626.00 for hedge replacement stating the hedges were either driven into, or were subjected to unauthorized cutting or trimming. The landlord provided a receipt and a hand-written *redacted* invoice for the claimed amount to replace the hedges. The landlord also provided photographs of the hedges which depict the hedges leaning to one side, and some photographs depict breakage on some of the branches. The tenant claims the hedges suffered damage during December of

2012 as a result of heavy wet snow on the branches. The tenant provided a statement from a previous neighbour to this effect, which further identified the actual dates of the purported heavy snowfall.

The landlord further claimed costs for photograph production and registered mail costs. Both parties were apprised that such costs are not compensable as they are discretionary administrative costs, also referred to as *litigation costs* for which all parties are themselves each responsible. The only administrative cost allowed by the Act is for recovery of the application filing fee.

The landlord relies on their determination that the tenant caused the purported damages. The tenant relies on their argument that they did not cause the damage and the landlord fabricated some of their evidence.

Analysis

The parties raised an abundance of issues; however, only the evidence relevant to this matter has been considered.

In this type of application, the burden of proof rests with the applicant landlord to prove their claim. In addition, **Section 7** of the Act applies and it 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.

Therefore, under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** as above:

1. Proof the damage or loss exists,
2. Proof the damage or loss was the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement, and not for reasonable wear and tear.

3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

When a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement, whichever is less. The onus is on the tenant to show that the expenditure is unreasonable or extravagant.

In addition, **Part 3 of the Residential Tenancy Regulations** prescribes the content, manner and process by which landlords must conduct condition inspections. The full text of the Act and the associated Regulation can be accessed via the website: www.rto.gov.bc.ca . Relevant, in part, the Regulations state as follows (Part 3 – Section 21):

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Findings

I find the evidence is that the tenant turned in the keys to the unit 2 days after they were to have vacated. As a result, I find the landlord is entitled to be compensated the equivalent of 2 days of rent for over holding the rental unit in the amount of **\$83.33**.

On the face of the evidence, I find the landlord's CIR is somewhat unclear. I find the landlord's Condition Inspection Report contains certain anomalies which compromises its interpretation. I find the landlord's *Coding* of conditions in the *move out portion* of the report does not follow the same protocol as in the instructions for completing the report, or the *move in portion* of the report. In the move out section, all items are check-marked rather than *coded*. The discrepancy creates some ambiguity which the landlord addressed in testimony. I find the landlord relies on their *comments* for clarification, and I find I must balance the tenant's testimony that information in the CIR was missing, or later adulterated after the form was signed. I find the landlord acknowledged that at least one inclusion was subsequently made in respect to a hole in a door not being recorded on the day of the inspection. I further do not accept the landlord's 'Attached List' to the CIR was part of the document signed by both parties on the day of the move out inspection. As a result, I place limited emphasis and evidentiary weight to the

landlord's CIR in relation to the condition of the interior of the rental unit at the end of the tenancy. However, while I reject the landlord's CIR to support their claims, I find the tenant did not effectively dispute any of the landlord's photograph evidence, nor the *move in* portion of the CIR, both of which I prefer to the contents of the landlord's *move out* CIR, and to both of which I assign evidentiary weight. For example, I find the tenant did not dispute the GOOD (G) *coding* for all items respecting the KITCHEN in the *move in* portion of the CIR. Therefore, the tenant cannot now dispute that damage to the backsplash tiles was there from the outset of the tenancy.

I find the landlord's photographs of the unit at the end of the tenancy support the landlord's claim they had to make certain repairs and attend to a quantum of cleaning of the unit.

I am unable to accurately ascertain the landlord's actual costs for the purported repairs to the interior of the unit - given the multiple invoices, lack of itemization, and repairs for which the landlord is not claiming. None the less, on balance of probabilities I accept the landlord's evidence supports the rental unit contained deficiencies beyond the scope of reasonable wear and tear and that the landlord is owed a quantum in compensation for these claims. I accept the landlord's e-mail evidence titled QUOTE for 2737 KITCHENER dated April 15, 2013: an estimate from their repair contractor for \$700.00 for labour, and I grant the landlord this amount for all interior repairs. I specifically make no finding in respect to materials as I have no evidence in regard to them. The landlord is awarded **\$700.00**, without leave to reapply.

I find the landlord's evidence claiming costs for cleaning is in sharp contrast with the tenant's evidence they left the rental unit reasonably clean as required by the Act. I find I prefer the landlord's photographic evidence in this respect and I grant the landlord their claim for cleaning costs in the amount of **\$330.00**.

I find that the landlord has not presented any evidence to support the tenant damaged the landlord's hedges. I note that the hedges are not part of the CIR, and that in the landlord's photographic evidence the hedge trunks / stems appear broken without any evidence of *cuts* as purported by the landlord. I find I prefer the tenant's testimony and supporting evidence that the hedges suffered breakage under the weight from a heavy snowfall over the winter months, and not at the hands of the tenant's conduct. **I dismiss** this portion of the landlord's claim, without leave to reapply.

As the landlord was partly successful in their claims, they are entitled to recover the filing fee of **\$50.00**. The tenant's security deposit will be offset from the award made herein.

Calculation for Monetary Order

Over holding of unit	\$83.33
Damages / interior repairs	\$700.00
Cleaning costs	\$330.00
Filing fee for this application	\$50.00
<i>Less Security Deposit held by landlord</i>	<i>- 625.00</i>
Total Monetary Award to landlord	\$538.33

Conclusion

The landlord's claim, in part, has been **granted**, without leave to reapply.

I Order the landlord may retain the tenant's security deposit in the amount of \$625.00 and **I Grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$538.33**. *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: September 04, 2013

Residential Tenancy Branch

