



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute resolution, in which the landlord requested compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the security deposit and to recover the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord stated she received an amended application that requested return of double the security deposit, and other costs. An amended application was not supplied as part of the tenant's hearing package. The additional claim for compensation was reviewed with the tenant at the start of the hearing. The tenant claimed mailing costs; which I explained are not considered as a direct breach of the Act.

The tenant also amended her application to request bank fees; no verification of these fees was supplied; therefore that claim was immediately dismissed.

The parties were told that the security deposit would be dealt with in accordance with the Act and Regulation.

The landlord supplied a CD of evidence; it was a duplicate of the paper evidence supplied. This CD could not be viewed by the arbitrator.

The landlord's claim totaled \$940.00; less the \$237.50 security deposit.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss under the Act in the sum of \$940.00?

May the landlord retain the security deposit?

Is the tenant entitled to return of double the security deposit?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that the tenancy commenced on September 1, 2012; rent was \$525.00 per month; a security deposit in the sum of \$237.50 was paid.

The tenant and landlord are sisters.

The tenant was 1 of 4 individuals who signed a tenancy agreement, as a tenant in common for rental of a room in a house. A multi-page addendum was signed by each tenant; setting out responsibility for cleaning and maintenance. A copy of the tenancy agreement and addendum was not supplied as evidence.

There was no dispute that a move-in condition inspection report was completed at the start of the tenancy; the tenant confirmed receipt of a copy of that report. The other 3 tenants in common moved into the unit at the same time and also completed inspection reports with the landlord.

On March 3, 2013 two of the 4 tenants in common vacated the unit. The landlord said she completed a detailed move-out inspection with those tenants and returned their deposits. She knew that there were some issues with the state of the home but did not wish to cause any disputes that could lead to her sister causing further damage to the home while she remained in the unit. Copies of the inspection reports were not supplied.

On March 28, 2013 the tenant moved her belongings out of the unit and on April 3, 2013 the landlord and tenant completed a condition inspection report. The tenant made a number of alterations to the report and signed the report. The landlord said that as the report had been altered by the tenant and there was disagreement in relation to the state of the home she did not send a copy of the report to the tenant.

A copy of the move-in and move out inspection report was not supplied as evidence.

Within a week of the tenant vacating, the remaining tenant in common also moved out. That tenant was given his deposit, as the landlord wanted possession of the home, so paid the deposit in recognition of the need to possess the home.

The landlord has made the following claim:

One half of cleaning costs	\$160.00
Pro-rated dump charge	\$20.00
Broken table	\$50.00
Damaged chlorine dispenser	\$25.00
Missing hammer drill	\$249.00
Missing Shaw cable box	\$138.00
Missing television cord	\$63.00
Spice Rack	\$20.00
Tote containing wall repair equipment	\$215.00
TOTAL	\$940.00

The landlord has claimed only partial cleaning and dump costs against this tenant.

The landlord had left personal property in the rental unit; an inventory was created. A copy of this inventory was not supplied as evidence.

The landlord supplied a number of photographs as evidence, most of which were taken on April 6, 2013. Photos showing dog feces and a dog toy in the yard were taken on September 12, 2012. Other photos showed a dirty stove, several bags of garbage, items left on a counter in the garage, areas under appliances that required cleaning, dirty floors, dirty window sills and other areas of the home showing the need for cleaning.

The landlord claimed \$20.00 per hour for 2 people, who cleaned the unit over an 8 hour period of time.

The landlord said that the unit had been clean when the 2 previous tenants in common vacated and that by the end of the month, when this tenant vacated, the unit had progressed to the state shown in the photographs. There were belongings that had been left in the garage; the tenant's witness had been allowed to leave property in the garage during the month of March. When his property was removed, items were left behind that the landlord had to take to the dump.

The landlord supplied a copy of February 28, 2013 email from 2 tenants in common, alleging the tenant had broken a coffee table by walking on it. This email also outlined conflict that was occurring between the landlord and her sister.

The landlord claimed costs for items that she has yet to replace; the dispenser, table, drill, cable box, television cord and tote containing wall repairs items. The landlord said she could not recall seeing the spice rack in the unit when completing the inspection in March, so cannot be sure the tenant took that item. The landlord said that the remaining missing items had been taken by the tenant.

The tenant responded that she had cleaned the unit when the 2 tenants in common vacated and that she also cleaned prior to vacating on March 28, 2013. The tenant did not see the condition inspection report completed with the 2 tenants in common and she does not believe that all areas of the home were fully inspected. At the start of the tenancy the appliances were not moved and the stove rings were not inspected. The tenant did not use the fridge in the upper portion of the home and the picture showed items that were placed in the fridge after she had vacated.

The tenant said that items left in the unit did not belong to her and that she did not take any of the items that the landlord said are missing from the home. The tenant denied damaging the table.

The tenant said that the photos showing the need for cleaning were taken after she had vacated, when another tenant in common remained in the home. The tenant provided a letter from a cousin and friend who indicated they helped during the move-out. The letters referenced a dispute in relation to the alleged smell of cat urine; which they could not detect.

The tenant in common who remained in the home submitted an unsigned letter to the tenant; this letter was not disputed by the landlord. This tenant in common said that the inspection for the previous 2 tenants who vacated had been very brief, that the landlord was going to complete renovations, so cleaning would not have been important, that the missing cable box had not been seen in some time.

Analysis

In relation to the security deposit that was paid by the tenant, I have considered the Act and the impact of the landlord's failure to provide the tenant with a copy of the inspection report.

Section 35 of the Act provides:

Condition inspection: end of tenancy

- 35** (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*
(a) *on or after the day the tenant ceases to occupy the rental unit, or*
(b) *on another mutually agreed day.*
(2) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
(3) *The landlord must complete a condition inspection report in accordance with the regulations.*
(4) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
(5) *The landlord may make the inspection and complete and sign the report without the tenant if*
(a) *the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or*
(b) *the tenant has abandoned the rental unit.*

(Emphasis added)

The landlord did not supply copies of any of the condition inspection reports that had been completed, as evidence for this hearing. There was no dispute that a copy of the move-out condition inspection report was not given to the tenant.

When a landlord does not provide a tenant with a copy of the report, Section 36 of the Act determines that the landlord then extinguishes the right to claim against the security deposit for damage to the rental unit. Therefore, I find that the landlord did extinguish the right to claim against the deposit.

Consequences for tenant and landlord if report requirements not met

- 36** (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
- (a) the landlord complied with section 35 (2) [2 opportunities for inspection], and*
 - (b) the tenant has not participated on either occasion.*
- (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
- (a) does not comply with section 35 (2) [2 opportunities for inspection],*
 - (b) having complied with section 35 (2), does not participate on either occasion, or*
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

(Emphasis added)

I have applied section 38 of the Act which determines that when the right to claim against the deposit has been extinguished, the landlord must return the deposit within fifteen days of the end of the tenancy or the date the written address was received; whichever is later. There was no dispute that the forwarding address was given to the landlord on April 3, 2013, after the tenancy had ended and that the deposit has not been returned

Therefore, pursuant to section 38(6) of the Act I find that the tenant is entitled to return of double the \$237.50 security deposit.

I have then considered the landlord's monetary claim. When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that this was a tenancy in common. Residential Tenancy Branch policy defines a tenancy in common:

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

I must then decide what, if any damage this particular tenant in common must assume, relative to the other 3 tenants; 2 of which vacated a short time prior and the last who vacated just after the tenant who is named as a respondent.

The landlord provided copies of photographs as the only evidence of the state of the unit; most taken 1 week after this tenancy ended. Some of the photographs were taken 6 months prior to the tenancy ending. From the photographic evidence it is apparent that cleaning was required; however, I must be able to find that the respondent is the tenant who was responsible for the damage.

A condition inspection report is a record of the state of the home and when the landlord failed to provide a copy of the move-out inspection report to the tenant and to submit a copy of that report as evidence I must consider the disputed testimony and make a finding based on the balance of probabilities.

I find that the unit did require cleaning and have accepted the tenant's testimony that she did complete some cleaning when the previous tenants vacated and at the time she vacated. In the absence of a detailed report completed with the previous 2 tenant-in-common I have no confidence that the unit was fully cleaned at any time during March, 2013.

However, in the absence of copies of the reports, I find, on the balance of probabilities, that the tenant was responsible for at least some of the cleaning that was required to the unit and that the landlord's claim for cleaning costs against this tenant in common forms only a portion of the cost that would have been incurred. Based on the photographic evidence I find that the landlord's time to clean and cost claimed is reasonable and that whether or not the other tenants in common paid for cleaning, this tenant must assume partial responsibility for the state of the home.

In the absence of verification of the value of items claimed, any evidence of an inventory of property that was in the unit at the start of the tenancy and the end of each tenancy, I find that the balance of the claim is dismissed. I am not convinced that the tenant damaged a table and, even if she had, there was no verification of the value of the table.

Therefore, the parties are entitled to the following:

	Claimed	Accepted
One half of cleaning costs	\$160.00	\$160.00
Pro-rated dump charge	\$20.00	0
Broken table	\$50.00	0
Damaged chlorine dispenser	\$25.00	0
Missing hammer drill	\$249.00	0
Missing Shaw cable box	\$138.00	0
Missing television cord	\$63.00	0
Spice Rack	\$20.00	0
Tote containing wall repair equipment	\$215.00	0
	\$940.00	\$160.00
Double the security deposit to tenant - \$475.00		
Balance owed to tenant		\$315.00

As each application has some merit the filing fee costs are set off against the other.

I find that the tenant has established a monetary claim, in the amount of \$315.00, which is comprised of double the security deposit, less the amount owed to the landlord.

Based on these determinations I grant the tenant a monetary Order in the sum of \$315.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation for cleaning costs; the balance of the claim is dismissed.

The tenant is entitled to return of double the security deposit; less the sum owed to the landlord.

The filing fees are set off against each other.

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: July 17, 2013

Residential Tenancy Branch

