



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC MNSD FF
For the landlord: MND MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenant applied for a monetary order for the return of double the security deposit, and to recover the filing fee.

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet damage deposit and security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

On May 23, 2013 the hearing was adjourned to allow time for the tenant to serve evidence in response to the landlord’s application, and for the landlord to serve any rebuttal evidence in response to the tenant’s evidence. On July 15, 2013 when the hearing reconvened, the parties confirmed that they had received the evidence from the other party and had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served with evidence under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The tenant provided her new mailing address during the hearing. As a result, both the tenant's application and the landlord's application were amended to reflect the new mailing address for the tenant.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A fixed term tenancy began on October 1, 2011 and reverted to a month to month tenancy after April 30, 2013. Monthly rent in the amount of \$1,900.00 was due on the first day of each month. A security deposit of \$950.00 was paid by the tenant at the start of the tenancy. The tenant vacated the rental unit on January 15, 2013.

Tenant's claim

The tenant is seeking the return of double her security deposit of \$950.00 for a total monetary claim of \$1,900.00.

The tenant testified that the landlord did not perform a move-in condition inspection or a move-out condition inspection during the tenancy, which the landlord confirmed. The tenant stated that she sent her forwarding address to the landlord by regular mail on January 15, 2013. The landlord stated that he did not receive the forwarding address for the tenant until receiving her application for dispute resolution during the first week of March 2013. The landlord did not file his application claiming in part towards the security deposit until April 24, 2013.

The tenant stated that she did not sign over any portion of the security deposit. Both parties confirmed that there have been no previous claims regarding the security deposit until this hearing. The landlord confirmed that he continues to hold the tenant's security deposit of \$950.00.

Landlord's claim

The landlord reduced his original monetary claim of \$3,798.00 to the following during the hearing:

Item #	Description	Amount
1	Unpaid portion of January 2013 rent	\$950.00
2	Curtains/blinds	\$74.94
3	Yard cleanup	\$1,349.84
4	Locks	\$225.00
5	Baseboards	\$360.00
6	Paint removal	\$200.00
7	Faceplates	\$85.00
8	Additional garbage	\$240.00
	TOTAL	\$3,484.78

Landlord Item 1

The parties agreed that the tenant vacated the rental unit on January 15, 2013. The landlord testified that the tenancy did not end based on a mutual agreement as claimed by the tenant. The landlord submitted a December 20, 2012 e-mail sent at 2:49 p.m. from the tenant which reads in part:

“...A place that was looked at today is interested in renting to us for the 15th of January. Would this be too soon for you? Would you still want a full months rent or just half?”

[reproduced as written]

The landlord responded to the tenant's e-mail on December 20, 2012 at 3:22 p.m. which read in part:

“Hi...Unless it gets rented out you will be paying the full month rent and I have to check the lease as I believe its till the end of March.”

[reproduced as written]

The landlord testified that he was able to re-rent the rental unit effective February 1, 2013 for the same monthly rent, \$1,900.00 per month. The tenant confirmed that she only paid \$950.00 for half of January 2013 rent. The landlord is claiming that he has

suffered a loss of the other half of January 2013 rent in the amount of \$950.00 due to the tenant failing to provide proper Notice under the *Act*.

The tenant referred to page 10 of her evidence in response to the landlord's claim. On page 10 the tenant writes that the landlord agreed to allow the tenant to only pay half of January 2013 rent. The landlord disputed the testimony of the tenant and stated that the documentary evidence on page 10 supports the landlord's position which is that the tenant would only be required to pay half of January 2013 rent if the tenant kept the rental unit in a tidy condition where the landlord wrote in part, "don't leave the house in a mess when you move out." The landlord stated that due to the tenant leaving so many personal items and garbage to dispose of resulting in the landlord suffering a loss for disposal and bin fees, the tenant did not comply with their agreement and he is seeking compensation for the loss he suffered under the *Act* as a result.

Landlord Item 2

The landlord is claiming \$74.94 for blind replacement and submitted a receipt as evidence dated January 28, 2013 with the amounts of \$49.97 for a "verticle" and \$24.97 for a "Mini Blind" for a total of \$74.94. The tenant disputed that the blinds were there when she was in the rental unit. The landlord did not submit any photos or other documentary evidence to support that the blinds being claimed were in the rental unit at the start of the tenancy.

Landlord Item 3

The landlord is claiming \$1,349.84 for yard cleanup fees comprised of two invoices; \$509.24 for a bin rental for garbage left behind by the tenant and \$840.60 for 30 hours of garbage cleanup at \$25.00 per hour. The landlord submitted an invoice dated February 5, 2013 for \$509.24 including taxes for a twelve yard disposal bin from a bin rental company. According to the first invoice, the disposal bin was provided from January 16, 2013 to January 17, 2013. The second invoice shows the amount of \$840.60 including taxes from a company which indicates that three men were hired between January 16, 2013 and January 17, 2013 for ten hours each at \$25.00 per hour for yard clean up to fill the disposal bin at the rental unit address.

The landlord submitted several colour photos in evidence to support the items left behind by the tenant. The tenant disputed several of the items in the photos by stating that they were there when she moved in, however, the tenant did confirm that she left the pool table behind that was shown in a photo. According to the tenant, the tenant stated that the new tenant requested for items to be left behind, however, the landlord

stated that he did not consent and requested vacant possession of the rental unit. The tenant confirmed that she did not have the permission of the landlord to leave any items at the rental unit when she vacated the rental unit and that she left a green exterior chair and a couple of televisions at the rental unit. The tenant also confirmed that the landlord did not destroy any of her personal property and that anything put into the disposal bins was “garbage”.

The tenant stated that she provided her rental unit keys to the new tenant and not to the landlord or the landlord’s agent.

Landlord Items 4,5,6,7 and 8

For the remaining items, 4 through 8, the landlord testified that he did not submit any documentary evidence to support these portions of his claim. The tenant did not agree to any of these items during the hearing.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenant's claim for double security deposit – Section 38 of the *Act*, requires that a landlord must return or make a claim against the security deposit within 15 days of the later of the end of tenancy and the date the forwarding address is provided. The tenant confirmed that she mailed her written forwarding address to the landlord on January 15, 2013 which the landlord denies he received. The landlord confirmed, however, that he did receive the tenant's written forwarding address when he was served with the tenant's application for dispute resolution in the first week of March 2013. The landlord did not file his application to claim towards the tenant's security deposit until more than one month later, on April 24, 2013. Therefore, **I find** the landlord breached section 38 of the *Act* by failing to return the tenant's security deposit or filing a claim within 15 days of the first week of March 2013. As a result, **I find** the tenant is entitled to the return of double her original security deposit of \$950.00 which doubles to a total of **\$1,900.00**.

Landlord's claim: Item 1 – The landlord is claiming \$950.00 which is half of one month's rent due to the tenant failing to provide proper notice in accordance with section 45 of the *Act*. The parties agreed that the tenant vacated the rental unit on January 15, 2013. The landlord testified that the tenancy did not end based on a mutual agreement as claimed by the tenant. The landlord submitted a December 20, 2012 e-mail sent at 2:49 p.m. from the tenant which reads in part:

“...A place that was looked at today is interested in renting to us for the 15th of January. Would this be too soon for you? Would you still want a full months rent or just half?”

[reproduced as written]

The landlord responded to that e-mail on December 20, 2012 at 3:22 p.m. and wrote:

“Hi...Unless it gets rented out you will be paying the full month rent and I have to check the lease as I believe its till the end of March.”

The landlord testified that the new tenant moved into the rental unit as of February 1, 2013 which caused the landlord to suffer a monetary loss of \$950.00 for the other half of January 2013 that the tenant did not pay. Documentary evidence submitted by the landlord supports that the tenant was advised by e-mail that the landlord expected the full month of rent unless a new tenant moved in to cover the loss of rent. The tenant did not send an e-mail to the landlord until December 20, 2012 advising that she would be vacating on January 15, 2013.

Section 45 of the *Act* states:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[emphasis added]

The tenant referred to page 10 of her evidence by stating that the landlord agreed to allow the tenant to only pay half of January 2013 rent. The landlord disputed the testimony of the tenant and stated that the documentary evidence on page 10 supports the landlord's position which is that the tenant would only be required to pay half of January 2013 rent if the tenant kept the rental unit in a tidy condition where the landlord wrote in part, "don't leave the house in a mess when you move out."

The landlord stated that due to the tenant leaving so many personal items and garbage to dispose of resulting in the landlord suffering a loss for disposal and bin fees, the tenant did not comply with their agreement and he is seeking compensation for the loss he suffered under the *Act* as a result.

Based on the above, **I find** the tenant breached section 45 of the *Act*. Regarding the tenant's claim that the landlord agreed to not charge her for half of January, **I find** that the tenant did not comply with the landlord's offer by leaving the rental unit in a clean condition, which is supported by my decision regarding item #3 below, the disposal and bin fees claimed by the landlord. Therefore, **I find** the landlord has met the burden of proof and that the tenant owes \$950.00 for the remainder of January 2013 rent and that the landlord suffered a loss as a result.

Landlord's claim: Item 2 – The landlord is claiming \$74.94 for blind replacement and submitted a receipt as evidence dated January 28, 2013 with the amounts of \$49.97 for a "verticle" and \$24.97 for a "Mini Blind" for a total of \$74.94. The tenant disputed that the blinds were there when she was in the rental unit. As the landlord failed to conduct a

move-in condition inspection report or a move-out condition inspection report, and failed to submit any other supporting documentation such as a photo of the blinds in the rental unit prior to the tenant moving in, **I find** the landlord has failed to meet the burden of proof regarding this portion of his claim. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Landlord's claim: Item 3 – The landlord is claiming \$1,349.84 for yard cleanup fees comprised of two invoices; \$509.24 for a bin rental for garbage left behind by the tenant and \$840.60 for 30 hours of garbage cleanup at \$25.00 per hour. The landlord submitted an invoice dated February 5, 2013 for \$509.24 including taxes for a twelve yard disposal bin from a bin rental company. According to the first invoice, the disposal bin was provided from January 16, 2013 to January 17, 2013. The second invoice shows the amount of \$840.60 including taxes from a company. This invoice supports that three men were hired between January 16, 2013 and January 17, 2013 for ten hours each at \$25.00 per hour to fill up the disposal bin at the rental unit address.

The landlord submitted several colour photos in evidence to support the items left behind by the tenant. Although the tenant disputed several of the items in the photos by stating that they were there when she moved in, the tenant did confirm that she left the pool table at the rental unit and did not have the permission of the landlord to leave any of her personal belongings at the rental unit. In addition, the tenant testified that there was a green exterior chair and a couple of televisions left at the rental unit. The tenant confirmed that the landlord did not destroy any of her personal property and that anything put into the disposal bins was "garbage".

The tenant testified that she did not return the keys to the landlord or the landlord's agent, and returned the keys to the new tenant instead. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) **give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.**

[emphasis added]

Based on the above, **I find** the tenant breached section 37 of the *Act* by leaving a pool table and other personal items such as a chair and a “couple of televisions” at the rental unit which resulted in the landlord suffering a loss of \$1,349.84 in disposal and bin fees as described above. Therefore, **I find** the landlord has met the burden of proof for this portion of his claim and is entitled to **\$1,349.84** in compensation for disposal and bin fees as claimed.

Landlord’s claim: Items 4,5,6,7 and 8 - For the remaining items, 4 through 8, the landlord testified that he did not submit any documentary evidence to support these portions of his claim. The tenant did not agree to any of these items during the hearing. As a result, **I find** the landlord did not meet the burden of proof to prove these portions of his claim. At the very least, I would have expected the landlord to submit documentary evidence to support the value of his alleged loss such as receipts or estimates, and photo evidence supporting any damage or loss as the landlord could not rely on a condition inspection report as both the move-in condition inspection report and the move-out condition inspection report were not completed by the landlord. Therefore, **I dismiss** items 4 through 8 of the landlord’s claim due to insufficient evidence, without leave to reapply.

As both the tenant’s claim and the landlord’s claim had merit, **I grant** both the tenant and the landlord the recovery of their filing fee of \$50.00. As the filing fees offset each other, **I find** that neither party is required to pay the other party the filing fee.

I find the parties have established the following monetary claims:

Landlord claim item #1	\$950.00
Landlord claim item #3	\$1,349.84
Landlord’s claim subtotal	\$2,299.84
<i>Tenant’s claim :</i> <i>(Less return of double the tenant’s original security deposit of \$950.00)</i>	<i>-(\$1,900.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORD	\$399.84

Therefore, **I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$399.84**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find the landlord established a total monetary claim of \$2,299.84 and the tenant established a total monetary claim of \$1,900.00, resulting in a balance owing by the tenant to the landlord in the amount of \$399.84.

I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of \$399.84. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2013

Residential Tenancy Branch

