Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the "*Act*") for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, for authorization to retain all or part of the security deposit and pet damage deposit, and to recover the filing fee.

The applicant landlord and the respondent tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The parties confirmed receiving the evidence package from the other party prior to the hearing, and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the *Act.*

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act,* and if so, in what amount*?*
- What should happen to the tenants' security deposit and pet damage deposit under the *Act?*

Background and Evidence

A fixed term tenancy agreement began between the parties on August 15, 2011 and reverted to a month to month tenancy after August 31, 2012. Initially, monthly rent in the amount of $2,000.00 was due on the first day of each month, and was subsequently increased via the mutual agreement of the parties to $2,242.00 per month as of

November 1, 2012. The parties confirmed that the tenants paid a security deposit of $1,000.00 and a pet damage deposit of $300.00 at the start of the tenancy, which the landlord continues to hold. The parties agreed the tenants vacated the rental unit on April 20, 2013, having provided their written one month notice to end the tenancy on March 29, 2013.

The landlord testified that he did not complete a move-in condition inspection report at the start of the tenancy, or a move-out condition inspection report at the end of the tenancy. The landlord testified during the hearing that he was not claiming for "pet damage".

The landlord has submitted a monetary claim of $2,110.39 comprised of the following:

1. Pool chemicals	$490.78
2. Unpaid hydro utilities	$236.71
3. Unpaid gas utilities	$147.90
4. Garbage removal and disposal of junk	$80.00
5. Cleaning of breezeway, shower stall, patio and sidewalks	$40.00
6. Mowing grass	$40.00
7. Loss of half of month's rent due to "house not move in ready".	$1,075.00
TOTAL	**$2,110.39**

Settlement Agreement

During the hearing, the parties agreed to settle some of the items being claimed by the landlord. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result, the corresponding item numbers were agreed upon by the parties, pursuant to section 63 of the *Act,* and form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement item number	**Agreed upon compensation to landlord by tenants**
Items 2&3 - Unpaid hydro and gas utilities	$327.00
Item 4 – Garbage removal and disposal of junk	$80.00

Item 5 – Cleaning of breezeway, shower stall, patio and sidewalks	$40.00
Item 6 – Mowing grass	$30.00
TOTAL	**$477.00**

Evidence related to remaining two items of the landlord's claim

Regarding item 1, the landlord is claiming $490.78 for the cost of pool chemicals. The landlord stated that he is not claiming for his labour related to the use of the pool chemicals and that the amount being claimed is for the cost of pool chemicals only. The landlord submitted eleven photos under the Pool/Patio, Photos tab of the landlord's evidence binder.

The landlord submitted a quote/estimate from a patio, pool and spa company in the amount of $498.78 including taxes for various pool chemicals. The quote/estimate reads in part, "Prices of chemicals needed to clear and open pool." The landlord referred to the tenancy agreement term #15 – Additional Terms where the swimming pool term reads:

> "Swimming pool supplies and maintenance (except for pool machinery maintenance) are the responsibility of the tenant. The initial spring service call remains the tenant's responsibility. On receipt of the paid pool service invoice, the landlord will reimburse expenses. The landlord assumes no liability associated with pool use."
>
> [reproduced as written]

There is no dispute that the pool chemicals were purchased as required by the tenants in 2012. The landlord stated that the only remaining pool chemicals purchased by the tenants in 2012, that could be used in 2013, were "two pucks". The parties referenced a May 2012 e-mail which confirms that the tenants did not "open the pool" in 2012 until May 2012. The term "open the pool" refers to preparing the pool for initial use for that particular year after being closed from the previous winter. The landlord confirmed that there were no specific dates to "open" the pool listed in the tenancy agreement terms signed by the tenants. The tenants dispute that they agreed to open the pool before they vacated the rental unit on April 20, 2013. The landlord reference an e-mail from the landlord dated April 5, 2013 which reads in part:

> "…as per your contract the pool needs to be opened and spring maintenance completed prior to your exit…"

[reproduced as written]

The April 5, 2013 e-mail described in part above was sent by the landlord to the tenant approximately one week after the landlord received the tenants one month notice dated March 29, 2013, indicating that the tenants would be vacating the rental unit by April 30, 2013. The tenants stated that they believed the pool would be opened in May 2013 and that they were not required to purchase pool chemicals and open the pool before they vacated the rental unit.

Regarding item 7, the landlord has claimed $1,075.00 for loss of half of a month's rent due to the tenants vacating the rental unit on April 20, 2013 and leaving the rental unit "not move in ready" condition. The tenants stated that they left the rental unit in "reasonably clean condition". The landlord referred to a video and pictures taken inside of the rental unit, however, confirmed that he neglected to submit the video or pictures taken inside of the rental unit in evidence to support his claim.

The landlord confirmed that he did not complete a move-in condition inspection report or a move-out condition inspection report. The landlord referred to a one page ad posting which he claims shows the condition of the rental unit exterior before the tenancy began. The photo in the ad posting submitted in evidence has one black and white photo which is dark, blurry and has a vehicle in the photo obscuring the view of the home and yard behind it.

The landlord testified that the flooring inside the home was damaged due to a large entertainment unit. The landlord stated that he took photos of the damaged flooring, however, he neglected to submit those photos in evidence in support of his claim.

The landlord stated that the rental unit blinds had not been cleaned, and that he received one quote for pressure washing and another quote for yard maintenance, due to the condition the tenants left the rental unit in after they vacated. The landlord confirmed that neither the pressure washing quote or the yard maintenance quote were submitted in evidence. The landlord submitted several photos of the grass, of two fireplaces, of the garden and of the exterior of the home. I note that compensation for the landlord mowing the grass has been described in the settlement agreement above.

The landlord stated that tenants did not clean the two fireplaces before they vacated the rental unit. The tenants disputed this portion of the landlord's claim and stated that they are not required under the *Act* to leave the rental unit in "move in ready condition", as the *Act* only requires them to leave the rental unit in reasonably clean condition, except for reasonable wear and tear.

The landlord submitted a binder in evidence, which included but was not limited to; photos, tenancy agreement, copies of e-mail correspondence, utility receipts, invoices, documents provided by the tenants including their written forwarding address and one month notice, and a summary of each portion of their claim. The tenants submitted the tenancy agreement, correspondence and other documents in evidence. All of the relevant evidence has been reviewed.

Analysis

Based on the documentary evidence, the testimony provided during the hearing, 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.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act,* regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

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.

Item 1 – The landlord has claimed $490.78 for the cost of pool chemicals. The landlord referred to the tenancy agreement term #15. There is no dispute that the pool chemicals

were purchased as required by the tenants in 2012. The parties referenced a May 2012 e-mail which confirms that the tenants did not "open the pool" in 2012 until May 2012.

Based on the above, **I find** the landlord has failed to meet the burden of proof in proving this portion of his claim. At the very least, for the landlord to be successful with this portion of the claim, the landlord would have had to specify a date in the swimming pool term of the tenancy agreement, for which the pool had to be opened and to which the tenants agreed to at the start of the tenancy. The swimming pool term of the tenancy agreement did not include any dates to either open or close the pool. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 7 – The landlord has claimed $1,075.00 for loss of half of a month's rent due to the tenants vacating the rental unit on April 20, 2013 and leaving the rental unit "not move in ready". The tenants stated that they left the rental unit in "reasonably clean condition". The landlord referred to a video and pictures taken inside of the rental unit, however, confirmed that he did not submit the video or pictures in evidence to support his claim.

The landlord confirmed that he did not complete a move-in condition inspection report or a move-out condition inspection report. Therefore, **I find** the landlord breached the *Act* by failing to complete a move-in condition inspection report as required under section 23 of the *Act* and a move-out condition inspection report as required under section 35 of the *Act.* Therefore, **I caution** the landlord to comply with section 23 and 35 of the *Act* in the future. As the landlord failed to complete a move-in condition inspection report, **I find** there is no agreed upon condition of the rental unit at the start of the tenancy. The landlord referred to a one page ad posting which the landlord claims shows the condition of the rental unit exterior before the tenancy began. **I find** that the one page ad posting submitted by the landlord is dark, blurry, taken from a distance, contains a vehicle which is partially obscuring the home, yard and garden, and does not constitute a move-in condition inspection report under section 23 the *Act*.

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.
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> (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 landlord has failed to meet the burden of proof to prove that the tenants failed to leave the rental unit in a condition that was "reasonably clean, and undamaged except for reasonable wear and tear" as required by section 37 of the *Act.* The tenants are not required to leave the rental unit in "move in ready" condition, as claimed by the landlord. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

As the landlord was successful with a portion of his claim, **I grant** the landlord the recovery of half of the $50.00 filing fee, in the amount of **$25.00**.

Security deposit and pet damage deposit – The landlord confirmed that he received the written forwarding address from the tenants on April 20, 2013. The landlord stated that he continues to hold the tenants' $1,000.00 security deposit and $300.00 pet damage deposit. The landlord confirmed during the hearing that he was not claiming for pet damage as part of his monetary claim. The landlord applied for dispute resolution claiming towards the security deposit and pet damage deposit on April 29, 2013, including a claim towards unpaid rent or utilities.

Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

> **38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**
>
> **(a) the date the tenancy ends, and**
>
> **(b) the date the landlord receives the tenant's forwarding address in writing,**
>
> the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), **a pet damage deposit may be used only for damage caused by a pet to the residential property,** unless the tenant agrees otherwise.

[emphasis added]

As the landlord failed to perform incoming or outgoing condition inspection reports, **I find** the landlord extinguished their right to claim against the security deposit and pet damage deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The landlord did apply for dispute resolution claiming towards unpaid rent and utilities, however. Therefore, **I find** that the security deposit does not double under the *Act* as a result.

Pursuant to section 38(7) of the *Act,* however, a pet damage deposit may be used only for damage caused by a pet to the residential property. In the matter before me, the landlord confirmed that he was not claiming for damage caused by a pet. Therefore, **I find** the pet damage deposit of $300.00 doubles under section 38 of the *Act* to **$600.00.** The landlord should have returned the pet damage deposit within 15 days of receiving the tenants' written forwarding address on April 20, 2013.

Monetary order – Based on the above, **I find** the landlord has established a total monetary claim of **$502.00** related to items 2,3,4,5 and 6, which were resolved by way of a settlement agreement between the parties for $477.00, plus $25.00 of the filing fee. I have dismissed items 1 and 7 due to insufficient evidence, without leave to reapply.

As the landlord continues to hold the tenants' $1,600.00 in deposits, comprised of a $1,000.00 security deposit and a $600.00 pet damage deposit after the original $300.00 was doubled pursuant to section 38 of the *Act*, **I authorize** the landlord to retain **$502.00** from the tenants' $1,000.00 security deposit, leaving a security deposit balance of $498.00, plus the doubled pet damage deposit of $600.00 owing to the tenants. **I order** the landlord to pay the tenants **$1,098.00**, comprised of the return the balance of the tenants' security deposit of $498.00 and the doubled pet damage deposit of $600.00. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **$1,098.00** which must be served on the landlord and may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

Conclusion

I dismiss items 1 and 7 of the landlord's claim without leave to reapply, due to insufficient evidence.

By way of a settlement agreement, I order the parties to comply with the terms of their settlement agreement as described above.

I authorize the landlord to retain $502.00 from the tenants' $1,000.00 security deposit, leaving a security deposit balance of $498.00, plus the doubled pet damage deposit of

$600.00 owing to the tenants. I order the landlord to pay the tenants $1,098.00, comprised of the return the balance of the tenants' security deposit of $498.00 and the doubled pet damage deposit of $600.00. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of $1,098.00 which must be served on the landlord and may be enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 4, 2013

Residential Tenancy Branch