



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's Application (filed May 31, 2013): MNSD; FF

Landlord's Application (filed August 27, 2013): MND; MNSD; MNDC; FF

Introduction

This matter was convened to hear cross applications. The Tenant applied for a monetary order for double the security deposit and to recover the cost of the filing fee from the Landlord.

The Landlord applied for a monetary order for damage to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of his monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Tenant NK testified that he served the Landlord WG with his Notice of Hearing documents by handing the documents to her with a witness present, on June 9, 2013. He stated that he also mailed the Landlord RG his Notice of Hearing documents by regular mail. RG testified that WG gave him a copy of the Tenant's Notice of Hearing documents on June 10, 2013, and that he received a copy in the mail on June 12, 2013.

The Landlord testified that he served the Tenant with his Notice of Hearing documents and documentary evidence by registered mail sent on August 27, 2013. The Landlord provided the tracking number for the registered documents. The Tenant stated that he received the documents today (September 6, 2013), but stated that he does not require more time to consider the Landlord's Application and documentary evidence.

Issues to be Decided

- Is the Tenant entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38 of the Act?

- Is the Landlord entitled to compensation for damages to the rental unit and to apply the security deposit towards that compensation?

Background and Evidence

This tenancy started on May 2, 2006 and ended on April 30, 2013. The Tenant paid a security deposit in the amount of \$500.00 on May 2, 2006.

The Tenant NK gave the following testimony:

The parties met on April 30, 2013, and did a “walk through” at the rental unit. At that time, the Tenant gave the Landlord his forwarding address, handwritten on a piece of paper. NK stated that they spent 1 ½ hours at the rental unit with the Landlord, but the Landlord did not ask the Tenant to sign a Condition Inspection Report.

The Landlord RG gave the following testimony:

RG acknowledged receipt of the Tenant’s forwarding address in writing but said that the Tenant gave him the wrong postal code. He stated that the walk through lasted only 10 or 15 minutes. He stated that he completed an inspection form by himself because NK would not wait to do the inspection. The Landlord provided a copy of the inspection report in evidence.

RG stated that the Tenants caused the following damage to the rental unit:

- Chipped bathtub
- Toilet tank top cracked
- Light cover missing
- Toilet roll dispenser missing
- Broken bathroom mirror
- Broken pocket door handle
- 2 missing smoke/carbon monoxide detectors
- Broken closet rod
- Damage to the front door area
- Damaged door chime

In addition, RG testified that the Tenants painted some rooms in a dark colour, which required two extra coats to cover. He stated that Tenant did not return all of the keys which meant that he had to change the deadbolts and door knobs on the front and back doors.

RG stated that the bathtub could have been re-glazed, but it would cost approximately the same amount as a new tub. He stated that he could not find replacement parts for the toilet that were the same colour. RG applied for the cost of replacing the tub, toilet, special water proof drywall and tiles, in the total amount of \$1,982.40.

RG provided some hand written invoices and a work sheet breaking down the repair expenses he is requesting. The total repair expenses, including the toilet and tub, are \$3,014.40

The Tenant NK gave the following reply:

NK agreed that the Tenants chipped the bathtub and cracked the toilet tank cover; however, he submitted that the bathtub could have been patched and reglazed rather than replaced. NK stated that the tub was an older tub, from 1975-80. NK stated that he tried to find a tank cover to match the colour of the old toilet, but was unsuccessful. NK submitted that it is unfair to expect the Tenants to pay for a remodeled bathroom.

NK agreed that he was responsible for breaking one of the light covers. He stated that the toilet roll holder fell apart due to normal wear and tear. He also agreed that he did not change the air filters on the furnace, but stated that he vacuumed around and inside the vents.

NK stated that the mirror was also old and was cracked when the Tenants moved in. He denied damaging the mirror.

NK said that the Landlords gave him two keys, but they were both for the front door and that they were returned at the end of the tenancy. He stated that he never had a set for the back door.

NK testified that the Tenants painted the walls at their own expense at the beginning of the tenancy and that they had to use a slightly darker paint because one original wall colour was a dark brownish-orange and another a purple colour. He stated that the walls had not been painted since the Tenants painted in 2006. The Tenant stated that he left some paint for touch ups and that the paint was a darker tone, but still neutral.

NK stated that the Tenants never used the pocket door. He said that the door chime was not functioning at the beginning of the tenancy and that it was never replaced by the Landlord. NK testified that one of the carbon monoxide detectors was missing at the beginning of the tenancy.

NK denied damaging the front door.

Analysis

Regarding the Tenant's application:

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord stated that the Tenant's forwarding address gave an incorrect postal code. In the absence of sufficient proof to the contrary, I find that the Landlord did not receive the Tenant's complete forwarding address on April 30, 2013. Therefore, I decline to award the Tenant compensation pursuant to the provisions of Section 38(6) of the Act.

The Act requires a Condition Inspection Report to be completed in accordance with Part 3 of the regulation at the beginning and the end of the tenancy. The onus is on the Landlord to complete the report and to provide the Tenant with a copy. The inspection report provided by the Landlord does not comply with the provisions of Part 3 of the regulation. The Act provides that if the Landlord does not complete a Condition Inspection Report as required, the Landlord's right to claim against the security deposit for damages is extinguished. Therefore, I find that the Tenant is entitled to return of the security deposit, plus accrued interest in the amount of \$16.86, for a total of **\$516.86**.

Regarding the Landlord's application:

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged **except for reasonable wear and tear** at the end of a tenancy.

I dismiss the Landlord's application for the cost of replacing the tub and toilet for the following reasons:

1. The Landlord's photographs indicate that the toilet and tub were blue. Because of the colour and style, I find it most probable that they were new in the 1970's or 1980's. Residential Tenancy Policy Guideline 40 provides the useful life of materials. Toilets and tubs have a useful life of 20 years.
2. The Landlord provided insufficient evidence of the cost of patching and re-glazing the tub, or that it would be necessary to replace the drywall and tiles if the tub was re-glazed rather than replaced.

The useful life of indoor paint is 4 years. A tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Most tenants will put up pictures in their home. A landlord may provide rules as to how the picture can be hung and if the tenant follows reasonable instructions, it is not considered damage. The Tenants lived in the rental unit for 7 years and therefore I find that the paint had outlived its normal useful life. The photographs provided by the Landlord do not indicate any damage to the walls beyond normal wear and tear. This portion of the Landlord's claim is also dismissed.

The Inspection Report provided in evidence is incomplete and the handwriting is illegible. The Tenant testified that the doorbell required replacing at the beginning of the tenancy and that there was only one carbon monoxide detector.

Residential Tenancy Guideline 1 provides that a landlord is responsible for routine furnace maintenance, replacing filters and cleaning heating ducts and ceiling vents.

I find that the Landlord has not provided sufficient evidence to support his claim for damages beyond normal wear and tear, with the exception of the damage that the

Tenant acknowledges. Therefore, I allow the Landlord's claim with respect to the following items:

Bedroom light shade	\$10.00
One carbon monoxide detector	<u>\$17.50</u>
TOTAL	\$27.50

It is important to note that in this case, the tenancy agreement includes numerous clauses that do not comply with the Act including, but not limited to, the following conditions:

- the Landlord may terminate the tenancy on 10 days notice if the Tenant's reference information is inaccurate;
- late payment of rent will be assessed a penalty of \$10.00 per day;
- the Tenant must give two full months notice to terminate the tenancy or pay two months' rent in lieu of such notice;
- if the Landlord needs to access any of the security deposit for repairs during the tenancy, the Tenant must replace the used funds within 30 days;
- upon termination of the tenancy, the Tenant will ensure that the property is in the same condition as when the tenancy began.

Section 5 of the Act provides that landlords and tenants may not avoid or contract out of the Act or regulations and that any attempt to do so is of no effect. I refer the parties to Sections 19, 20, 37, 38, and 44 of the Act and Section 7 of the regulation.

Set-off

I order that each party bear the cost of their own application. I set off the Landlord's monetary award against the Tenant's and hereby provide the Tenant with a Monetary Order, calculated as follows:

Tenant's monetary award	\$516.86
Landlord's monetary award	<u>-\$27.50</u>
TOTAL	\$489.36

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$489.36** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 17, 2013

Residential Tenancy Branch

