



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Domus Management
Christopher Investment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from Landlord DM (the landlord) and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

In her application naming the landlord, Landlord CI and Landlord OG as respondents, the tenant applied for:

- a monetary order for compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of her deposits pursuant to section 38; and
- authorization to recover her filing fee for this application from the landlords pursuant to section 72.

Both parties attended the September 27 teleconference hearing and in person at the October 25 hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to ask questions of one another, and to make final comments regarding the applications before me.

Preliminary Issues – Service of Documents

At the September 27, 2013 teleconference hearing (the teleconference hearing) the tenant testified that she received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on her door on April 25, 2013. The tenant also confirmed that she received a copy of the landlord's dispute resolution hearing package by registered mail on June 27, 2013. She also confirmed that she received a copy of

the landlord's written and photographic evidence package about a week before this hearing. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

At the teleconference hearing, the tenant testified that she sent a copy of her dispute resolution hearing package to the three landlords by sending one package to them at the address of the landlord by registered mail after she received the Notice of a Dispute Resolution Hearing from the Residential Tenancy Branch (the RTB) on July 3, 2013. The landlord's representative at both hearings, OO (the landlord), testified that he received a copy of the tenant's dispute resolution hearing package by registered mail a few days after July 2, 2013. I am satisfied that the tenant served her hearing package to the landlord in accordance with the *Act*.

At the teleconference hearing, the tenant testified that she sent a copy of her written and photographic evidence package to the landlord for distribution to the other landlords (Landlord CI and OG) by registered mail. She did not have a Canada Post Tracking Number and did not have the date when she mailed this evidence to the landlord(s). The landlord testified that the only material the landlords had received from the tenant was a copy of her application for dispute resolution, the Notice of a Dispute Resolution Hearing Package and associated RTB documents. He said that the landlord had not received any written or photographic evidence from the tenant.

For the reasons outlined in my Interim Decision of September 30, 2013, I granted an adjournment at the teleconference hearing of September 27, 2013, to enable the tenant to serve the landlords with copies of her written and photographic evidence.

Although I had ordered the tenant to serve the landlords with copies of her written and photographic evidence, the landlord testified at the reconvened hearing of October 25, 2013 in Burnaby, that the tenant had only included her written evidence in the package she sent to the landlords. The tenant testified that she sent copies of her written and photographic evidence to the landlords by registered mail. Since the only missing evidence was a series of nine photographs taken by the tenant on May 3, 2013, shortly before she left the rental unit, I asked the landlords' representatives present to review the photographs at the face-to-face hearing in the Burnaby Office of the RTB. The landlords' representatives agreed to review these photographs, which the landlord agreed were taken in the rental unit.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Are either of the parties entitled to monetary awards for losses or damage arising out of this tenancy? Which of

the parties are entitled to the tenant's deposits? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of these claims and my findings around each are set out below.

This tenancy began on December 1, 2011 as a one-year fixed term tenancy. At the expiration of the initial term, the tenancy converted to a periodic tenancy. Monthly rent by the end of the tenancy was \$829.00, payable in advance on the first of each month, plus \$15.00 for parking. The landlord continues to hold the tenant's \$397.50 security deposit paid on October 25, 2011, and the tenant's \$397.50 pet damage deposit paid on December 8, 2011.

The parties agreed that a joint move-in condition inspection was performed on or about November 30, 2011, when the tenant first moved into this rental unit. In addition to a joint move-in condition inspection report signed by both parties on November 30, 2011, the landlord entered into evidence copies of photographs of the rental unit when this tenancy began initialled by the landlord and the tenant. The tenant did not participate in a joint move-out condition inspection of these premises. She explained that after an incident where she alleged that the landlord (OO) physically assaulted her, the police told her to have no further contact with the landlord (OO). She said that her failure to agree to participate in a joint move-out condition inspection was a direct result of the advice provided to her by the police stemming from the alleged assault. The landlord entered into written evidence a copy of his May 6, 2013 move-out condition inspection report. This report included a detailed breakdown of the \$1,797.65 the landlord identified as owed by the tenant for damage and unpaid rent in the Security Deposit Statement. Both parties submitted their own photographs of the condition of the rental unit at the end of this tenancy.

The landlord confirmed receiving the tenant's forwarding address in writing on June 18, 2013. The landlord applied for dispute resolution to retain the tenant's deposits the following day.

The landlord's application for a monetary award of \$1,400.15 included the following items:

Item	Amount
Unpaid April 2013 Rent	\$844.00
NSF Cheque and Late Fee for April 2013 (\$25.00 + \$25.00 = \$50.00)	50.00
Unpaid Rent for First 5 Days of May 2013	136.15
Suite Cleaning	100.00
Drapes Cleaning	110.00
Carpet Replacement	550.00
Painting/Smoke Damage	370.00
Lost Key for Bicycle Room	10.00
Repair of Hole in Closet Wall	25.00
Less Deposits (\$397.50 + \$397.50 = \$795.00)	-795.00
Total of Above Items	\$1,400.15

At the reconvened hearing, the landlord also outlined the final amounts that he identified in the May 6, 2013 Security Deposit Statement contained in the move-out condition inspection report. Some of the landlord's figures were slightly different in this Statement, which identified \$1,360.32 as owed to the landlords. For example, the invoice for drapes showed that the cleaning costs were actually \$99.50 instead of the \$110.00 identified in the landlord's application for dispute resolution.

The tenant's application for a monetary award of \$1,650.00 identified the following items:

Item	Amount
Moving Costs	\$549.05
Estimated Loss of Income	1,100.00
Suffering from PTS from Scared all the time	?
Total of Above Items	\$1,649.05

At the reconvened hearing, the tenant provided very little evidence with respect to her application for a monetary award. She stated that her only interest was in obtaining a return of her deposits.

The tenant confirmed that she received a 10 Day Notice to End tenancy for Unpaid Rent (the 10 Day Notice) posted on her door by the landlord on April 25, 2013. This Notice required her to pay her April 2013 rent in full within 5 days or end her tenancy by May 8, 2013. She testified that she did not pay any rent for either April or May 2013. She said

that she vacated the rental unit on May 3, 2013. In her written evidence, the tenant stated that she was terrified of the landlord after he allegedly assaulted her. Although she identified a police file number, she provided no further evidence in this regard that could be verified. The landlord testified that he gained vacant possession of the rental unit on May 6, 2013.

Analysis

Based on the undisputed evidence of the parties, I find that the landlords are entitled to a monetary award for unpaid rent of \$844.00 for April 2013. I also find that the landlords are entitled to the monetary award of \$136.13 for unpaid rent for May 2013, their pro-rated rent for the first five days of May 2013. Pursuant to their Residential Tenancy Agreement, I also allow the landlords' application for a monetary award of \$25.00 for the NSF fee charged for one of the tenant's rent cheques and a late fee of \$25.00 for April 2013.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. I have carefully compared the joint move-in condition inspection report and photographs taken at the beginning of this tenancy with the landlord's move-out condition inspection report and the photographs taken by both parties at the end of this tenancy. In this regard, I give little weight to the tenant's claim that the condition of the premises were not as described in the joint move-in condition inspection report and photographs taken at that time. I also give little regard to the tenant's claim that she signed the joint move-in condition inspection report and initialled the landlord's extensive series of photographs taken at the beginning of this tenancy under duress. I find that the best evidence regarding the condition of the rental unit at the beginning of this tenancy is the joint move-in report signed and dated as being accurate by the tenant on November 30, 2011. I also find that the landlord's photographs taken at the start of this tenancy and

initialled by both the landlord and the tenant at that time constitutes very strong evidence as to the true condition of the rental unit when this tenancy began.

While I accept that the premises were in the condition described in the move-in condition report and photographs, I find that the photographs of the rental unit submitted by the parties provide two different perspectives on the state of the rental unit at the end of this tenancy. The tenant's photographs, many of which were of entire rooms, lack some detail, but show a rental unit that appears to be in relatively good condition. By contrast, many of the landlord's photographs are of very specific sections of the rental unit (e.g., an electrical outlet; one element of a stove, etc.,) and do not, for the most part, show a very broad perspective of the overall condition of the rental unit. Although the landlord testified that some of his specific photographs reveal stains from smoking in this non-smoking unit, I find only marginal evidence in the photographs to show the staining and lack of proper cleaning he has claimed was evident in these photographs.

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit when this tenancy ended. The tenant testified that she left the rental unit very clean. She said that worked on it "from top to bottom" before she vacated the rental unit. Her witness testified that the tenant spent a lot of time cleaning the rental unit at the end of her tenancy and that he was unaware of any smoke damage in the rental unit. The landlord testified that on one occasion he observed the tenant, who had claimed to be a non-smoker when she moved into the rental unit, light a cigarette in the rental unit and commence smoking. He said that the rental unit was affected by cigarette smoke and required cleaning and painting at the end of this tenancy to remove the smoking damage.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenant did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean, and undamaged" as some cleaning was likely required by the landlord after the tenant vacated the rental unit and there was some damage to the rental unit. For that reason, I find that the landlord is entitled to a monetary award of \$50.00 for general cleaning and a further \$99.50 for cleaning of the drapes that was required at the end of this tenancy. I also issue a monetary award of \$25.00 to repair the hole in the closet wall, which is apparent through the landlord's photographic evidence.

I have also considered the landlord's recovery of \$550.00 of the \$2,214.59 bill to replace carpet in the living room, dining room, hall and bedroom of this rental unit. The landlord gave undisputed sworn testimony, written and photographic evidence that the

tenant cut out two sections of carpet in her bedroom during her tenancy. The photographs reveal that at least one of these patches of carpet was of a significant size. The tenant testified that the carpeting throughout the rental unit was old, in poor condition and had an “awful smell.” She said that she had to cut out these portions of carpet when she discovered an infestation of bugs in this portion of the carpet. The landlord did not dispute the tenant’s sworn oral testimony and written evidence that there were red spots on some of the carpet in the living room and near the front door of the rental unit, which were present from the commencement of her tenancy. The tenant described the carpet as being old and in poor condition from the beginning of this tenancy. The tenant’s witness testified that he was present with the tenant at the rental unit at the time this tenancy began. He gave undisputed sworn testimony that the carpet was “super old”, flat and wet when the tenant took occupancy of the rental unit. The landlord did not know when the carpet had last been replaced in this rental unit, but noted that it had been professionally steam cleaned at the beginning of this tenancy. The tenant said that the carpet was still quite wet when she was scheduled to move into this rental unit. She also said that the steam cleaning masked the condition of the carpet.

The landlord estimated that the tenant’s bedroom accounted for approximately one-third of the area where the landlords installed new carpet after the end of this tenancy. The landlord noted that one-third of the \$2,214.59 carpet bill would be close to \$750.00. He said that the landlords decided to only claim for \$550.00 of this cost as they felt that the tenant should not be held fully responsible for the costs of purchasing and installing the new carpeting in the bedroom.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. The useful life for carpeting in a residential tenancy is estimated at 10 years in Policy Guideline 40. Based on the sworn evidence before me, I find that the landlord has not demonstrated that the existing carpeting in the rental unit replaced by the landlord was less than 10 years old. In fact, based on the undisputed testimony of the tenant’s witness, it would seem that this carpeting was well past its useful life. For these reasons, I dismiss the landlord’s application for damage to replace the carpet without leave to reapply.

The landlord provided written evidence and sworn testimony that repainting was necessary due to the damage from smoking arising out of this tenancy. The landlord claimed for \$50.00 in paint and \$320.00 in labour to repaint the rental unit after the end of this tenancy. The tenant and her witness testified that the existing paint job when the tenant moved into the rental unit was sub-standard. They speculated that a watered

down water based paint had been used to cover over the previous paint. The tenant said that this inferior paint quickly faded creating patches of the previous paint showing through at different locations in this rental unit.

I have also taken account of Policy Guideline 40 in considering the landlord's application for the recovery of expenses incurred to repaint the rental unit at the end of this tenancy. Policy Guideline 40 establishes that the useful life of an internal paint job is estimated at four years (or 48 months).

In this regard, the landlord testified that the rental unit was last painted on May 27, 2011, within six months of the tenant taking occupancy of the rental unit. When the landlord repainted the premises in May 2013, this would have been approximately 24 months after the last painting of the rental unit. Policy Guideline 40 would suggest that the landlord would then be entitled to recover approximately 50% of the expenses of repainting the rental suite if I were satisfied that the damage arose out of this tenancy and not partially as a result of a substandard initial paint job. This would lead to a monetary award of \$185.00 ($\$370.00 \times 50\% = \185.00). However, based on the undisputed testimony of the tenant and her witness, I find that there may be an element of merit to the tenant's claim that the May 2011 repainting in place at the rental unit at the time of the commencement of this tenancy was not fully satisfactory. As the tenant signed the joint move-in condition inspection report without noting any problems with the existing paint job, I limit the reduction in the landlord's entitlement to recover the painting expenses to \$50.00. This amount is to be deducted from the landlord's entitlement to a monetary award of \$185.00 for damage resulting in repainting. For these reasons, I allow the landlord a monetary award of \$135.00 for repainting of the rental unit.

While the tenant claimed to have returned all keys to the landlord, she did so by leaving keys in the rental unit and not by handing the keys directly to any representative of the landlord. Under these circumstances, I allow the landlord's application to recover \$10.00 to replace the missing key for the bicycle room.

I allow the landlord to recover the landlord's \$50.00 filing fee from the tenant. I also allow the landlord to retain the tenant's deposits in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

I dismiss the tenant's application in its entirety without leave to reapply as the tenant failed to provide sufficient evidence to demonstrate her entitlement to any monetary award for the items identified in her application for dispute resolution. As noted above,

at the reconvened hearing the tenant said that her only interest in this matter was to recover her deposits.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, damage arising out of this tenancy and the filing fee for the landlord's application and to retain the tenant's deposits:

Item	Amount
Unpaid April 2013 Rent	\$844.00
NSF Cheque and Late Fee for April 2013 (\$25.00 + \$25.00 = \$50.00)	50.00
Unpaid Rent for First 5 Days of May 2013	136.15
Suite Cleaning	50.00
Drapes Cleaning	99.50
Repainting	135.00
Lost Key for Bicycle Room	10.00
Repair of Hole in Closet Wall	25.00
Less Deposits (\$397.50 + \$397.50 = \$795.00)	-795.00
Recovery of Landlord's Filing Fee	50.00
Total Monetary Order	\$604.65

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 30, 2013

Residential Tenancy Branch