



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICES LTD., EPTA PROPERTIES LTD. c/o MACDONALD COMMERCIAL RES.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: ERP MNSD MNDC OLC FF
Landlord: MNSD MND MNR MNDC FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The tenant filed their application on November 28, 2013 for Orders as follows and subsequently amended:

1. An Order for landlord to make emergency repairs - Section 33
2. A monetary Order for damages and loss – Section 67
3. Return of all or part of security and pet deposits – Section 38
4. For the landlord to comply with the Act – Section 62
5. An Order to recover the filing fee for this application (\$50) - Section 72.

The landlord filed their application on December 12, 2013 for Orders as follows and subsequently amended:

1. A monetary Order for damages and loss – Section 67
2. A monetary Order for Unpaid Rent – Section 67
3. A monetary Order for damages to the unit – Section 67
4. An Order to retain the security and pet deposits as offset (1425) - Section 38
5. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and acknowledged receiving the evidence of the other, and were given a full opportunity to present relevant evidence, make relevant submissions and discuss their dispute with a view to resolving the matters in dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

As the tenant has vacated the rental unit their application in respect to items respecting an ongoing tenancy are hereby preliminarily **dismissed**. The tenant orally amended their application – confirming they are solely seeking the return of their *original deposits* and waiving the doubling provisions in respect to the deposits; and, compensation for loss of use of a portion of the rental unit.

The landlord orally amended their application – cancelling their claim for loss of revenue for February 2014 (\$1425.00), and 50% of their claim for carpet cleaning (originally \$109.20).

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

Both parties submitted an abundance of evidence including photographic evidence - actual and digital.

The tenancy began on October 01, 2013 as a written fixed term tenancy of 1 year, with an end date of September 30, 2014. The monthly rent was set at \$1425.00 per month payable on the first of each month. The landlord collected a security deposit and a pet damage deposit in the respective amounts of \$712.50 in the sum of \$1425.00 – retained in trust by the landlord. At the outset of the tenancy the landlord and tenant conducted a mutual move in inspection and condition inspection report (CIR) which they each signed as satisfactory.

The landlord acknowledged that on November 28, 2013 they were provided a detailed Notice to vacate by the tenant citing Section 45(3) of the Act - purporting the landlord failed to comply with a material term of the tenancy – which the tenant explained was in respect to a standard term, and effectively a material term, of the landlord's obligation to enact necessary repairs. The tenant did not provide a date they would be vacating but testified they vacated December 01, 2013 and subsequently surrendered their access keys. In their Notice to End the tenancy the tenant provided their forwarding address and phone numbers and a request to conduct a move out inspection on the evening of December 01, 2013. The landlord testified they were unavailable to do an inspection and elected to not communicate further with the tenant after they vacated and determined they had abandoned the rental unit. The tenant testified the landlord had their e-mail address, their phone numbers, and their forwarding address and were

available for an inspection but the landlord did not pursue one. It must be noted that the parties' normal and agreed method of communication was via e-mail.

This dispute advanced as follows. On the long weekend of October 12, 2013 the tenant informed the landlord by e-mail of an odour emanating from the carpet in the 2nd bedroom (spare bedroom) and that the odour from the carpet (the problem carpet) was persistent. The landlord acknowledged the tenant was experiencing a problem and agreed to attend to and resolve the problem after the long weekend. However, before the landlord's response to the tenant's complaint the tenant secured a carpet cleaning machine and later the same day (October 12, 2013) informed the landlord they had cleaned the problem carpet 5 times utilizing vinegar, baking soda and rinsed the carpet with water. The landlord communicated that they were concerned the carpet may have been compromised but said they would arrange for expert cleaning. On October 18, 2013 the landlord contracted with a professional carpet cleaner who on October 21, 2013 attended the rental unit and determined the problem carpet would benefit from only a standard or basic cleaning process, and advanced on this course. One week later the tenant reported to the landlord the odour had subsided but still noticeable. Again, the landlord communicated with their cleaning expert whom now recommended a more comprehensive cleansing – scheduled for November 04, 2013 but ultimately ineffectively cancelled by the tenant, as the carpet cleaner attended the unit but could not contact the tenant for access. The tenant did not reschedule for the augmented cleaning but instead focused on attempts to have the carpet replaced. The tenant provided they relied on their garnered carpet installer and their own experience about carpeting in determining the carpet was likely compromised and required replacement. The landlord provided they were relying on their carpet cleaning expert in determining the starting solution to the problem carpet, if resolvable, was to begin with a comprehensive cleansing versus a more costly replacement of the carpet. The tenant testified they lost confidence in the landlord when the landlord insisted they would not consider replacement of the carpet and determined to vacate as a result. The landlord testified carpet replacement was not contemplated as there was no conclusive proof it was necessary. The landlord took the position the tenant's request was unreasonable and without basis for ending the tenancy. As a result the landlord argued the tenant broke the lease and abandoned the rental unit leaving it unclean and damaged.

The tenant seeks compensation for loss of use of the spare bedroom and for the return of their original deposits held in trust by the landlord.

The landlord seeks unpaid rent / loss of revenue for December 2013 and January 2014. They provided evidence that they could not have re-rented the rental unit for December 2013 given the timing of the tenant's Notice to end received near the end of November.

The landlord further provided evidence of their advertising efforts to re-rent the unit for January 2014. They provided photographic evidence purporting the tenant left the rental unit unclean. The landlord seeks \$150.00 for cleaning. The tenant argued they cleaned the unit leaving it "immaculate" and that the landlord's photographic evidence is fraudulent and could not be the same rental unit. The tenant's photographic / digital evidence depicts images from a further distance than the landlord's evidence indicating the rental unit as having been cleaned.

The landlord seeks compensation of \$54.60 representing 50% of the receipted carpet cleaning done on October 21, 2013 in response to the tenant's complaint of an odour. The landlord surmises the tenant was likely responsible for the odour due to the actions of their own pets, and the tenant's actions of inappropriately cleaning the carpet on October 12, 2013 contributed to the problem – all of which the tenant denied.

The parties agreed the tenancy agreement required the tenant to have the carpets professionally cleaned at the end of the tenancy. The landlord seeks compensation for professional carpet cleaning in the receipted amount of \$168.00.

The tenant acknowledged they damaged a custom-coloured kitchen cabinet door which both parties also acknowledged is costly to replace due to its custom nature. Both parties provided evidence as to the cost for a replacement door. The landlord argued that only their quotation provided a replacement door with certainty as to all the specifications for a matching cabinet door. The landlord seeks quotations sum of \$603.75.

The landlord provided photographic evidence of an alleged broken refrigerator grill and document evidence as to the cost for its replacement and installation in the sum amount of \$142.10. The landlord claims they found the broken grill at the side of the refrigerator removed from its source. The tenant disputes the landlord's claim they damaged the grill stating they were not aware of the missing or damaged grill.

Analysis

For ease, the parties may consult a copy of the *Residential Tenancy Act* and *Residential Tenancy Regulation* at www.rto.gov.bc.ca.

On preponderance of all *relevant* testimony and all other *relevant* evidence submitted I have reached findings as follows.

Tenant's claim

I find there is no dispute between the tenant and landlord that the carpet in the spare bedroom had an odour and as a result a remedy was pursued by both parties. Unfortunately the parties could not agree on the nature of or course of remedy. Regardless of this fact, the tenant was clearly left with an area of the total footprint of the rental unit which was not usable by the tenant for the 2 month duration of this tenancy. I accept the landlord's undisputed evidence the square footage of the rental unit is in the total of 1155 square feet. The tenant's undisputed evidence is that the spare bedroom was 96 square feet. I find the tenant is entitled to compensation for loss in the proportioned value of the tenancy agreement in the amount reflecting 12% of the total rent paid for October and November 2013. As a result I grant the tenant compensation in the amount of **\$349.00**.

It is clear that the tenant ended the tenancy earlier than contracted with the landlord for a 1 year fixed term. However, I do not accept the landlord's claim that the tenant *abandoned* the rental unit. I prefer the evidence that the tenant informed the landlord in writing in advance they would be vacating for the reasons detailed in the Notice to end, and prompted the landlord to contact them with a view to achieving a mutual inspection. I find that it was known to the landlord the tenant would be vacating – albeit unspecified as to the exact date. I find the tenant presented the landlord with several options of communication and it was available to the landlord to communicate with the tenant to arrange a mutual inspection time, or make the prescribed offers of at least 2 opportunities for the inspection as stipulated by **Section 35(2)** of the Act. The mutual end of tenancy inspection need not have been done before the tenant physically vacated. The landlord retained a right to make an application for loss, if necessary, up to 2 years after the end of the tenancy. I find that not having complied with Section 35(2), **Section 36** of the Act states the landlord's right to claim against the security deposit or pet damage deposit was extinguished and effectively the deposits were rendered unavailable to the landlord. In accordance with **Section 38** of the Act, within 15 days after the later of the date the tenancy ended and the date the landlord received the tenant's forwarding address the landlord was then obligated to repay both deposits to the tenant. In this matter the tenant has solely requested the *original amount* of their deposits and waived the doubling provisions of Section 38. Therefore, I find they are entitled to the sum of the *original deposits* in the amount of **\$1425.00**.

Landlord's claim

I find the evidence is that despite the tenant's complaint to the landlord of a persistent odour in the spare bedroom carpet, the tenant then immediately determined to take matters respecting the problem into their own hands, which the parties dispute may have further compromised the problem, or may have aided a solution. Regardless, the evidence is that the landlord responded to the tenant's problem and soon after arranged for the odour problem to be resolved by cleaning, and also further acted by authorizing a second course of more thorough cleaning when the tenant confirmed the odour was still present following the first effort choice by the carpet cleaner. However, the evidence is that the tenant did not accommodate the second more thorough course to occur as they determined that the more valid course of action was by way of replacement of the carpet. I accept the parties' respective evidence and find it understandable that the tenant's *carpet installer* would recommend *carpet installation*, and that the landlord's *carpet cleaner* would recommend *carpet cleaning*. I make no finding as to which approach is correct in this matter. I find the parties have advanced equally weighted evidence respecting both approaches. Regardless, I find the landlord did not ignore the tenant's complaint or concerns and acted with diligence in attempting to resolve the problem as they were obligated to do according to the Act and Regulations. I accept the landlord's evidence their approach was to start with what seemed reasonable and cost effective. As a result, I find that the landlord was not in breach of compliance with a material term of the tenancy agreement - to make necessary repairs – and remaining conditions as prescribed by Section 45(3) of the Act, and therefore the tenant's Notice to end was ineffective to end the tenancy. As a result of all the above, I accept the landlord's claim the tenant broke the fixed term tenancy agreement and is responsible for the rent for December 2013. As the landlord could not secure a new tenant for January 2014 and I find they made reasonable efforts to re-rent the unit have provided sufficient evidence of mitigation, I find the landlord is owed unpaid rent for December 2013 and January 2014 in the sum amount of the landlord's claim of **\$2900.00**, which I grant without liberty to reapply.

If a claim is made by the landlord for damages to property, the normal measure of damage is the cost of repairs or replacement whichever is less. The onus is on the tenant to show that the expenditure is unreasonable. The landlord is required to mitigate their costs accordingly. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for damage – that is, conditions beyond reasonable wear and tear - and likely the result of the conduct or negligent actions of the tenant.

I find that standards of cleanliness are widely subjective. That is, what one person may find clean, may not be clean to another. I find the evidence of the tenant and the landlord respecting the cleanliness of the rental unit at the end of the tenancy must be weighed against the requirement of **Section 37** of the Act which states that the tenant must leave the rental unit *reasonably clean, and undamaged except for reasonable wear and tear*. In response to the tenant's assertions the landlord's photographs of the rental unit do not depict the rental unit in dispute, I find that in comparing the photographic evidence of both parties the landlord's evidence, on balance of probabilities, depicts the same rental unit that is depicted by the tenant and both depict the rental unit in dispute. I prefer the landlord's evidence that it was not left in "immaculate" condition as asserted by the tenant; however, I find both parties have presented evidence it was left *reasonably clean*. As a result, **I dismiss** this portion of the landlord's claim for cleaning. I accept the landlord is owed the cost associated with professionally cleaning of the rental unit carpeting at the end of the tenancy as contracted in the tenancy agreement. I grant the landlord **\$168.00** in the latter respect.

I do not accept the landlord's claim the tenant is responsible for a portion of the carpet cleaning performed October 21, 2013. I find the landlord has not proven the tenant contributed to the issues or problem respecting the carpet in the spare room. I find the landlord contracted with their choice of carpet cleaner in pursuit of their obligation, to achieve a result of their choosing. The tenant's choice was for a completely different course of action. The landlord having satisfied themselves they were responsible to clean the carpet, I find no basis upon which the tenant is responsible for a course of action chosen by the landlord. As a result, **I dismiss** this portion of the landlord's claim for carpet cleaning.

I accept the evidence of both parties that the tenant is responsible for the damage to the cabinet door, and I prefer and accept the landlord's evidence respecting the course and cost associated to ensure its replacement. I grant the landlord their claim, inclusive of services of their 'handyman' in the amount of \$236.25, in the sum of **\$603.75** in respect to this claim.

I prefer the evidence of the landlord respecting the refrigerator bottom grill. I accept that as the grill "clips" were found broken the grill requires replacement versus repair. It must be noted the landlord's evidence for the grill is \$25.38 and \$109.95 plus taxes for the transportation and labour to acquire and install the refrigerator grill. I grant the landlord the sum of **\$142.10** in respect to this claim.

As both parties have been partially successful in their claims they are equally entitled to recover costs of \$50.00 for filing their applications – which effectively cancel each out.

Calculation for Monetary Order

sum of landlord's award	\$ 3813.85
<i>minus sum of tenant's award</i>	-\$ 1774.00
<i>Minus security and pet damage deposits held by landlord in trust</i>	-\$ 1425.00
Monetary Award for landlord	\$614.85

Conclusion

The tenant's application has been granted.

The landlord's application, in part, has been granted.

I Order that the landlord may retain the security and pet damage deposits of \$1425.00 in partial satisfaction of their claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$614.85**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 27, 2014

Residential Tenancy Branch

