



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, authorization to retain the tenant's security deposit, and to recover the filing fee.

An agent for the landlord, "KC", (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

The tenant did not attend the hearing. As a result, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the tenant was served with the Notice of Hearing by registered mail on October 22, 2013. The agent provided a registered mail tracking number in evidence and confirmed the name and address for the tenant on the registered mail package, which contained the landlord's evidence, matched the name and address provided by the tenant as his written forwarding address on the outgoing condition inspection report, dated September 30, 2013. The agent clarified that the tenant provided his written forwarding address on the outgoing condition inspection report several days later on October 5, 2013. The outgoing move-out condition inspection report was submitted in evidence by the landlord.

The agent testified that the registered mail package was not returned to the landlord. Section 90 of the *Act*, indicates that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I am satisfied that the tenant was deemed served as of October 27, 2013, which is five days after the date the registered mail package was mailed on October 22, 2013.

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 tenant's security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began on September 1, 2012, and reverted to a month to month tenancy after August 31, 2013. Monthly rent in the amount of \$1,175.00 was due on the first day of each month. The tenant paid a security deposit of \$587.50 at the start of the tenancy, which the landlord continues to hold.

The agent referred a letter from the tenant dated August 29, 2013, submitted in evidence. The agent stated that the August 29, 2013 document is the tenant's one month written notice indicating to the landlord that the tenant would be vacating the rental unit on September 30, 2013. The agent confirmed that the tenant did vacate the rental unit on September 30, 2013.

The landlord has claimed \$738.61, comprised of the following:

Item 1. Key fob replacement	\$75.00
Item 2. Parking remote	\$75.00
Item 3. Damage caused by tenant resulting in overflow of water in rental unit	\$538.61
Item 4. Recovery of filing fee	\$50.00
TOTAL	\$738.61

Regarding items 1 and 2, the agent referred to document #6 in the landlord's evidence, a receipt from the agent for the replacement of a key fob and parking remote dated October 1, 2013, in the amount of \$150.00. The agent stated that the amount being claimed is the exact cost of replacing both items, which were not returned by the tenant at the end of the tenancy. The agent also referred to the condition inspection report submitted in evidence, which the agent indicated supports that the tenant was provided two key fobs and a parking remote at the start of the tenancy, and only returned one key fob and failed to return the parking remote at the end of the tenancy.

Regarding item 3, the agent referred to document #7 in the landlord's evidence, a document which was attached to two invoices, indicating that \$538.61 was charged due to an "after hour service call" and repair work related to a report of water leaking from the rental unit, report of water into another suite, and water leaking into the parkade below. The agent testified that the water leak occurred in May 2013, and that the agent discovered the water leak after receiving a telephone call from the tenant. The agent stated that upon entering the tenant's rental unit, the agent saw water overflowing from the raised shower stall, where the tenant had hung a pair of jeans to remove sand from the jeans. The jeans appeared to have fallen in the shower, blocking the shower drain, resulting in an overflow of water. The agent stated that the tenant confirmed he had left the rental unit with the water in the shower left on.

The agent stated that the unit below was also damaged as a result of the flood of water in the rental unit, and that the water ended up leaking into the parkade below. The agent stated that the tenant was negligent by leaving running water in the shower with a pair of jeans hanging, and then deciding to leave the rental unit, resulting in the jeans falling under their own weight from being wet, blocking the shower drain, causing water to overflow the shower, and leaking from the bathroom into the unit below and into the parkade below.

The landlord submitted his application claiming towards the tenant's security deposit on October 15, 2013.

Analysis

Based on documentary evidence and undisputed testimony of the agent 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.

Landlord's claim for items 1 and 2 – The agent referred to document #6 in the landlord's evidence, a receipt from the agent for the replacement of a key fob and parking remote dated October 1, 2013, in the amount of \$150.00. The agent stated that the amount being claimed is the exact cost of replacing both items, which were not returned by the tenant. I find the receipt for \$150.00 dated October 1, 2013, and the condition inspection report submitted in evidence, support that the tenant was provided two key fobs and a parking remote at the start of the tenancy, and only returned one key fob and failed to return the parking remote at the end of the tenancy. Therefore, I find the landlord has met the burden of proof for these portions of their claim and are entitled to compensation in the amount of **\$150.00**, for replacement of the \$75.00 key fob and \$75.00 parking remote.

Landlord's claim for item 3 – The agent referred to document #7 in the landlord's evidence, a document which was attached to two invoices, indicating that \$538.61 was charged due an "after hour service call" and repair work related to a report of water leaking from the rental unit into the unit below and further down into to the parkade. I accept the agent's undisputed testimony which is supported by documentary evidence, that the landlord suffered a loss of \$538.61 due to the negligent actions of the tenant having hung a pair of jeans in the shower with the water running, resulting in those jeans falling under their own weight from being soaked with water, and blocking the water drain, resulting in flooding in the rental unit, the unit below, and into the parkade. Therefore, I find the landlord has met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$538.61**, for costs incurred by the landlord to repair the damage to the rental unit and the unit below due to the negligent actions of the tenant.

As the landlord's application had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

The tenant's security deposit of \$587.50 has accrued no interest since the start of the tenancy. As the landlord applied for dispute resolution on October 15, 2013, I find the landlord complied with section 38 of the *Act* by claiming towards the security deposit within 15 days of the end of the tenancy.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$738.61** comprised of \$75.00 for the replacement of a key fob, \$75.00 for a garage remote, \$538.61 for damages caused by the tenant being negligent, plus the

recovery of the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit. **I ORDER** the landlord to retain the tenant's full security deposit of \$587.50 in partial satisfaction of the claim, and **I grant** the landlord a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of **\$151.11**. 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

The landlord has established a total monetary claim of \$738.61. The landlord has been ordered to retain the tenant's full security deposit of \$587.50 in partial satisfaction of the landlord's claim. The landlord has been granted a monetary order under section 67 for the balance due of \$151.11. 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.

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: February 12, 2014

Residential Tenancy Branch

