



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX KELOWNA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord – MNR, MND, MNSD, MNDC, FF

For the tenant – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord's agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on May 01, 2014 for a fixed term tenancy which was due to expire on April 30, 2015. Rent for this unit was \$1,250.00 per month due on the first of each month. The tenant vacated the rental unit on May 22, 2014 and provided a forwarding address by email on May 22 and June 01, 2014. The tenant paid a security deposit of \$625.00 which is held in trust by the landlord.

The landlord's application

KC testified that at the start of the tenancy KM conducted a move in condition inspection and completed the report on a document that is duplicated. After the inspection the tenant signed the report and was immediately provided with a copy of the report. Later the other agent for the landlord KC sent an email to the tenant saying that a copy of the report would be sent to the tenant as KC was not aware that KM had already provided the tenant with a copy of the report. KC testified that at the end of the tenancy the tenant was given five different times to do the move out inspection. The tenant agreed to attend at one of these suggested times but later sent KC an email declining the opportunity to attend the inspection. KC testified that the move out inspection was therefore done in the tenant's absence.

KC testified that during the time the tenancy agreement was signed with the tenant, KC and KM were working for a different property management company. The first lease was in the name of KC's previous management company but during the transition to the new management company KC transferred all its clients, so a second lease agreement was sent out with the new management company's name on it so the tenant was aware who her current landlord was. No other terms in the tenancy agreement were altered. The tenant's security deposit remains in a trust account with KC.

KC testified that they had originally claimed a Monetary Order for unpaid rent for June as the tenant had ended her tenancy before the end of the fixed term; however, since filing their application they did manage to find a new tenant who moved into the unit on June 10, 2014. The owners then decided not to pursue this tenant for the loss of rent for the first 10 days in June. The landlord therefore withdraws their claim to recover a loss of rent of \$1,250.00.

KC testified that there is a clause in the tenancy agreement which provides for a fee to be charged to the tenant for liquidated damages of \$625.00 if the tenant breaks the lease before the end of the fixed term. KC testified that this fee covers the expenses to re-rent the unit to new tenants. As the tenant did break the lease in the first month of the tenancy the landlord seeks to recover this fee for liquidated damages for the cost to re-rent the unit.

KC testified that this tenant moved into the unit and was not happy with the cleanliness of the unit. The tenant called KM when KM and KC were in the car with their children. KC testified that the tenant was yelling at KM and was very vulgar. KC spoke to the tenant and had to put the phone down due to the tenant's behaviour. KM had attempted to send cleaners into the unit but they had to work around the tenant's schedule. These cleaners were not able to clean the unit for the tenant until on or about May 08, 2014 and the owner of the unit covered that expense. KC testified that the tenant moved from the unit on May 22, 2014. During the move out inspection it was determined and recorded that the tenant had not left the rental unit clean and some minor cleaning had to be completed to prepare the unit for new tenants. The landlord seeks to recover \$63.00 for this work and has provided an invoice in evidence.

KC testified that the unit was provided fully furnished. Part of these furnishings was a mattress cover which was missing at the end of the tenancy. KC agreed that the landlord or the owners had not completed an itemized inventory of the owners belongings left in the unit. The landlord seeks to recover \$55.25 for a new mattress cover and has provided a receipt in evidence.

KC testified that the TV remote was also missing at the end of the tenancy. The landlord was able to obtain another one from the building manager and they paid the building manager \$50.00 for this; however, they did not receive a receipt for the remote.

KC testified that the tenant caused damage to the leather couch in the unit. No damage was recorded on the move in condition inspection report; however the move out report does identify damage to the couch. The damage appears to be caused by liquid having been spilt on the couch which has caused the leather to bubble. This damage was unsightly and the couch had to be replaced as the furnishings in this unit are high end. KC testified that the owner had informed the landlord that the couch was six years old and worth \$1,100.00. The owners purchased another leather couch for \$500.00 and seek to recover this from the tenant. A hand written receipt for the couch has been provided in evidence.

KC testified that the landlord seeks an Order to keep the security deposit of \$625.00 in partial satisfaction of their claim.

The tenant disputed the landlord's claim. The tenant testified that she did not attend the move out inspection as the landlord had not sent the tenant a copy of the move in inspection report despite numerous requests for it. The tenant refers to her email evidence showing the tenant had asked the landlord to provide a copy of the report seven times in four weeks. The tenant testified that when she did receive the report with the landlord's evidence package it had been altered by the landlords. The tenant refers to the inspection reports which show some alterations between one report and the other. The tenant testified that at that time the tenant also received a copy of the lease agreement. The tenant testified that when she signed the agreement the landlords name was the first property management company and now the copy of the agreement shows the name in the other property management company.

The tenant disputed the landlord's claim for liquidated damages. The tenant testified that she had cause to move out and end the tenancy because the landlord KC violated the tenant's right to quiet enjoyment of the rental unit by harassing the tenant. The tenant testified that the unit was not clean at the start of the tenancy and that there was damage to the unit and the furniture in the unit. The tenant refers to the move in inspection report which details some cleaning is required and some minor damage in the unit. The tenant testified that when she had moved in and noticed the condition of the unit she did call KM to follow up about the cleaners but KM put KC on the phone and KC said he did not work for the tenant and wanted to re-rent the unit to someone else. KC then hung up on the tenant.

The tenant testified that she was fearful of KC and thought he might enter the tenant's unit or try to evict the tenant; so on May 03, 2014 the tenant emailed KC and asked KC to put an eviction in writing. After this the tenant received a series of abusive emails from KC and refers to the selection of emails provided in evidence. The tenant testified that the landlord's emails demean the tenant and the tenant found them threatening, abusive and insulting. The tenant testified that after the tenancy ended KC also contacted the tenant's employer's HR department and said he was going to contact the RCMP about the theft of the TV remote.

The tenant agreed that the landlord did send in cleaners but testified that these cleaners only cleaned the fridge and shower but not the entire unit. At the end of the tenancy the tenant testified that the unit was left reasonably clean as shown in the tenant's photographic evidence.

The tenant disputed the landlord's claim for a mattress cover. The tenant testified that there was never a mattress cover when she moved in and the tenant used her own bedding. The tenant testified that the landlord did not complete an inventory showing the items left in the unit. The tenant testified that she never used the TV remote and one of the tenant's photographs show the remote on the coffee table on the day the tenant left the unit on May 22, 2014. The tenant also disputed the landlord's claim that the tenant caused damage to the couch. The tenant questions the validity of the landlord's receipt as it is hand written and could have been written by the landlord. The tenant testified that since moving in she was working around the clock and did not use the couch or spill anything on the couch.

KC testified that they sent an email to the tenant's employer as another employee working in the same place was under contract to the property management company and had asked them to give the tenant a break. Therefore, it was the tenant's employer that contacted the landlord first and the landlord just responded to that contact. KC testified that the couch was purchased second hand and that is why the receipt is hand written.

The tenant's application

The tenant testified that she was unable to move her belongings into the unit as the unit was dirty when the tenant moved in. The tenant testified that she had a pile of boxes in the kitchen and could not unpack anything until the unit was cleaned. The tenant testified that she lost use of the unit and had to move out again on May 22, 2014 due to harassment from KC who did not

respect the tenant's right to quiet enjoyment. The tenant feels that KC manipulated her and proposed a mutual agreement to end the tenancy at the end of May. The tenant refers to the email dated May 09, 2014 which says KC informed the tenant that she had agreed to move out. The tenant testified that she felt tricked into moving out. The tenant seeks \$1,250.00 for a loss of quiet enjoyment and \$300.00 for moving and relocation costs.

The tenant seeks a Monetary Order for the return of the security deposit as the landlord has extinguished their right to keep it when the landlord did not provide a copy of the move in inspection report.

The landlord testified that the tenant took occupation of the rental unit and had full access to all areas of the unit. There was only some minor cleaning to be done and the unit was not filthy as suggested by the tenant.

KC testified that the only time he had spoken to the tenant on the telephone was the time the tenant called and was vulgar and rude on the phone so KC hung up on the tenant. The tenant then tried to slander KC's name to KC's company.

KC testified that they did not give the tenant a Mutual Agreement to End Tenancy and the tenant had signed a tenancy agreement for a year. KC testified that the tenant has not provided any receipts showing costs for moving and as this was a furnished unit the tenant would only have had to have moved personal belongings and not furniture.

KC testified that the tenant sent her mother to pick up the tenant's mail from the property management company's office. In that mail package were both condition inspection reports and the tenant was given copies of the move in report at the start of the tenancy. The tenant's mother was recording this meeting and would not sign to accept the tenant's mail so was not allowed to take the tenant's mail. If the tenant misplaced the move in report at the start of the tenancy this is not the fault of the landlords.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for liquidated damages; a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I have considered the tenancy agreement and find there is a clause for liquidated damages. I also find the tenant did elect to end the tenancy before the end of the fixed term and therefore is liable to pay the landlord a sum for re-renting the unit. The tenant has argued that the landlord changed the landlord's name on the tenancy agreement after the tenant had signed the original agreement. If the landlord's name changed but no further changes were made that would alter the terms of the tenancy I find the tenancy agreement remains a valid and legal agreement between the parties. It is my decision that the amount of \$625.00 is a reasonable pre-estimate of costs to be charged for re-renting the unit and as such I uphold the landlord's claim for a Monetary Order for **\$625.00**.

With regard to the landlord's claim for cleaning; under s. 32 of the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. The landlord's claim for cleaning is therefore dismissed without leave to reapply.

With regard to the landlord's claim for the mattress cover and TV remote; the landlord has the burden of proof to show that these items were in place at the start of the tenancy. The tenant agreed that the TV remote was in the unit but disputed that the mattress cover was there at the start of the tenancy. As the landlord has not provided an itemized list of belongings in the unit at the start of the tenancy the landlord has not met the burden of proof that there was a mattress cover and therefore this section of the landlords claim for \$55.25 is dismissed. The tenant's photographic evidence shows the TV remote in place on the last day of the tenancy. I am not therefore satisfied that the landlord has sufficient evidence to show that this was removed by the

tenant or the actual cost to replace the TV remote. Therefore the landlord's claim to recover the sum of \$50.00 is dismissed.

With regard to the landlord's claim for damage to the leather couch. The landlord has provided a copy of the move in inspection report which does not document any damage to the couch at the start of the tenancy but does document some other minor damage to other areas of the unit. I have reviewed the different copies of the reports and find there are some discrepancies between the copies; however these discrepancies are of things not claimed by the landlord. The move out inspection report does document that the couch has some damage. The tenant argued that the couch was left in the same condition as it was in at the start of the tenancy; however, as the tenant did attend the move in inspection and signed to agree that the report fairly represented the condition of the unit I can only determine that this damage was done during the tenancy; however, as the couch was six years old and a second hand couch was purchased for \$500.00 I must limit the landlord's claim due to depreciation of the couch by 60 percent. It is therefore my decision that the landlord is entitled to recover the amount of **\$200.00**.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. The landlord is therefore entitled to keep the security deposit of **\$625.00** pursuant to s. 38(4)9b) of the *Act* in partial satisfaction of their claim. A Monetary Order has been issued to the landlord for the following amount pursuant to s. 67 of the *Act*:

Liquidated damages	\$625.00
Damage to the couch	\$200.00
Filing fee	\$50.00
Less security deposit	(\$625.00)
Total amount due to the landlord	\$ 250.00

With regard to the tenant's claim for \$1,250.00 for loss of quiet enjoyment; I have considered the tenant's claim that KC harassed the tenant and sent abusive, demeaning and insulting emails. As explained during the hearing I do not find the landlord's emails to the tenant to be worded in a way that could be considered to be harassing or insulting. While I accept that some of the emails could have been worded in a more professional manner, considering the landlord's position as a property manager, I do not find their content to be sufficiently insulting, abusive or

demeaning that would warrant the tenant ending the tenancy or of a nature that would breach the covenant of quiet enjoyment. Consequently, the tenant's application for a Monetary Order for \$1,250.00 is dismissed without leave to reapply.

With regard to the tenant's claim to recover moving and relocation costs; as the tenant decided to end the tenancy and I have found the landlord cannot be held responsible for this decision, then the tenant must bear any costs incurred to move from the unit. Consequently, the tenant's claim for \$300.00 is dismissed without leave to reapply.

With regard to the tenants claim to recover the security deposit; The tenant testified that she did not receive a copy of the move in inspection report within the required time frame and the landlord has extinguished their right to file a claim to keep the security deposit. KC testified that the tenant did receive a copy of that report on the day the inspection was done. I refer the parties to s. 24(2) of the *Act* which states:

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As it is one person's word against that of the other concerning the issues of whether or not the tenant did receive a copy of the move in inspection report within the required time frame as the landlord has claimed to keep the security deposit for something other than just damages, the landlord has not extinguished their right to file this claim to keep the security deposit. Consequently, as I have awarded the security deposit to the landlord to offset against the landlord's monetary claim I must therefore dismiss this section of the tenant's claim to recover the security deposit without leave to reapply.

As the tenant's claim has no merit I find the tenant must bear the cost of filing her own application.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$250.00**. The Order must be served on the tenant. If the tenant fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

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 06, 2014

Residential Tenancy Branch

