



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is the upper portion of a house. During this tenancy the landlord resided in the basement portion of the house.

There is no written tenancy agreement in evidence for the tenancy which began April 15, 2013. An initial payment of \$1,600.00 was agreed to by the parties. Thereafter, monthly rent of \$1,800.00 was due and payable in advance on the first day of each month. There is conflicting testimony around whether or not a security deposit was included in the payment of \$1,600.00; the landlord claims it was not, however, tenant "DMF" claims that it was. The tenant claims to have confirmed this during the hearing by way of a text messages exchanged with her husband. There appears to be no dispute that a pet damage deposit was not collected. A move-in condition inspection report was not completed.

In response to applications by both parties (files # 820936 & # 822117) a previous hearing was held on June 24, 2014. Pursuant to the decision issued by date of June 27, 2014, the tenants' application for cancellation of a notice to end tenancy for cause was dismissed, and an order of possession was issued in favour of the landlord to be effective June 30, 2014. Additionally, a monetary order for \$50.00 was issued in favour of the landlord with respect to recovery of the filing fee. Subsequently, the tenants

applied for review consideration. By review consideration decision dated July 11, 2014 the tenants' application was dismissed, and the original decision and orders dated June 27, 2014 were upheld.

The landlord's current application was filed on July 07, 2014, and later amended on August 11, 2014 to include application to retain the security deposit. The tenants vacated the unit on July 31, 2014. The landlord testified that she completed a move-out condition inspection report in the absence of the tenants, however, a copy of the report was not submitted in evidence.

By way of text message sometime during the first half of August 2014, the tenants provided a forwarding address in care of one of the tenant's parents. During the hearing tenant "DMF" declined to provide their current residential address, and she undertook to inform the Branch of that address after the conclusion of the hearing.

On October 24, 2014 the landlord submitted an amended "monetary order worksheet" (the "worksheet") which reflects an increase in the original amount of compensation sought of \$1,691.92, to \$6,355.90. The landlord testified that the amended worksheet was sent to the tenants by way of registered mail to the address, as above, provided by the tenants. Evidence provided by the landlord includes the Canada Post tracking number for the registered mail. The Canada Post website informs that the item was accepted at the Post Office on October 25, 2014, and that it was "successfully delivered" on October 29, 2014. Tenant "DMF" testified that while she has the original worksheet, she does not possess the amended worksheet.

In summary, the landlord seeks miscellaneous compensation arising from what she claims are cleaning, repairs and replacement of certain items, all of which are required as a direct result of this tenancy.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.gov.bc.ca/landlordtenant

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

As well, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and...

Based on the affirmed but frequently conflicting testimony of the parties, and the documentary evidence which includes, but is not limited to, digital photographs, receipts / invoices and quotes submitted by the landlord, the various aspects of the landlord's application and my related findings are set out below.

Despite tenant "DMF's" claim that she has not presently received a copy of the landlord's amended worksheet, I find that it was served at a forwarding address provided by the tenants. As it was documented as having been "successfully delivered" on October 29, 2014, I find that it was served sufficiently far in advance of this hearing to be considered in my findings.

Security deposit

As earlier noted, the landlord testified that the initial payment of \$1,600.00 did not include a security deposit, whereas tenant "DMR" testified that a security deposit was paid. There is no conclusive documentary evidence either way. It was also apparent that tenant "DMF" had no personal recollection of the matter but, rather, relied on a text message from her husband during the hearing. Further, I note that the landlord's original application was amended to include application to retain the security deposit; I find that this amendment was likely made after the tenants provided a forwarding address in the first half of August 2014. In the result, as the regular monthly rent was \$1,800.00, I find that \$900.00 of the initial payment of \$1,600.00 was collected as rent for the latter half of April 2014 when the tenants had possession of the unit.

Section 19 of the Act addresses **Limits on amounts of deposits**, and provides that a landlord must not require or accept a security deposit "that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement." As the landlord identified her wish to assist the tenants, one of whom is the child of a best friend, I find on a balance of probabilities that **\$700.00** of the total amount of \$1,600.00 collected, reflects the amount of the security deposit paid (\$1,600.00 - \$900.00).

\$300.00: compensation for the estimated value of a dresser removed from the unit

There is conflicting testimony around whether or not the dresser was gifted to the tenants by the landlord. The landlord claims it was loaned to the tenants. Tenant "DMF" testified that as it was given to them, they took it when they vacated the unit. Additionally, the landlord testified that as the tenants "did a horrible job painting" the

dresser, she does not want it back; rather, she seeks compensation reflecting its replacement cost.

Documentary evidence concerning the gift-versus-loan status of the dresser is limited to text messages exchanged between the parties, and a hand written letter apparently to the landlord from her mother. There is no conclusive documentary evidence pertinent to the actual value of the dresser. On a balance of probabilities I find that the dresser was not gifted to the tenants and I find that the landlord has established entitlement to nominal compensation in the limited amount of **\$50.00**.

\$140.00: estimated cost for power washing stains from within the carport

Tenant "DMF" disputes this aspect of the claim, and takes the position that the carport was left reasonably clean at the end of tenancy. In the absence of the comparative results of move-in and move-out condition inspection reports, and as no cleaning cost has actually been incurred, this aspect of the claim is hereby dismissed.

\$89.15: stove / fridge appliance service call

I find that the landlord has failed to meet the burden of proving that this cost arose principally and directly as a result of the tenancy, and this claim is therefore dismissed.

***\$44.75:** replacement of water filter*

***\$21.00:** replacement of vertical blind track*

The tenant does not dispute these aspects of the landlord's application, and I therefore find that the landlord has established entitlement to the full amounts claimed.

\$140.00: estimated cost for repairs / replacement of the "front door custom moulding" caused by the tenants' dog

While tenant "DMF" does not dispute that damage was caused by the tenants' dog, she disputes the amount of compensation claimed. As no repair cost has presently been incurred, I find that the landlord has established entitlement to compensation in the limited amount of **\$100.00**.

\$1,946.00: approximately ½ the cost for removal and installation of new carpet / underlay in master bedroom, front room and stairs

The landlord takes the position that this work was necessary mainly as a result of pet urine and other miscellaneous stains / smells on the carpets, all of which arose from this tenancy. The landlord also notes that the carpets were approximately 10 years old.

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Building Elements," and provides that the useful life of carpets is 10 years. In consideration of

the effects of “reasonable wear and tear,” the estimated age of the carpets, and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is dismissed.

\$3,000.00: approximately ½ the estimated cost for repairing / replacing certain hardwood, tile and carpet

As no portion of this estimated cost has presently been incurred, and there are no comparative results from move-in and move-out condition inspection reports, I find on a balance of probabilities that the landlord has established entitlement limited to **\$300.00**.

\$225.00: labour + materials for certain repairs to the vinyl decking

In the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlord has established entitlement limited to **\$125.00**.

\$200.00: labour related to cleaning / removing mold resulting from the tenants’ failure to adequately ventilate the unit and use fans

The landlord surmised that the tenants may have brought mold with them to the unit. While the growth of mold is dependent on moisture and insufficient ventilation, I find there is insufficient evidence that the commencement of mold growth or the acceleration of pre-existing mold growth was the direct result of the tenants’ actions / inactions or behaviors. Accordingly, this aspect of the application must be dismissed.

\$200.00: labour + materials related to replacement of burnt out light bulbs and damaged / broken light switches

Tenant “DMF” acknowledged that some burnt out light bulbs may not have been replaced at the end of tenancy, however, she indicated that she was unaware of any damage to light switches. In the absence of the comparative results of move-in and move-out condition inspection reports, I find on a balance of probabilities that the landlord has established entitlement limited to **\$100.00**, or half the amount claimed.

\$28.00: (\$25.00 + tax) legal consultation

Section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the landlord’s claim is hereby dismissed.

\$69.17: (\$34.50 + \$5.88 + \$15.99 + \$12.80) cost for processing digital prints

For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

This aspect of the application concerns the filing fee paid with regard to the previous hearing held on June 24, 2014. As earlier noted, a monetary order was issued in favour of the landlord for this amount by date of June 25, 2014. In short, this particular matter has already been decided, and should the tenants not reimburse the landlord, the landlord has the option of filing that monetary order in the Small Claims Court.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with this current application, I find that she has established entitlement to recovery of the full filing fee.

Total: \$790.75 (\$50.00 + \$44.75 + \$21.00 + \$100.00 + \$300.00 \$125.00 + \$100.00 + \$50.00)

Section 72(2) of the Act provides in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I order that the landlord retain the security deposit of **\$700.00**, and I grant the landlord a **monetary order** for the balance owed of **\$90.75** (\$790.75 - \$700.00).

Conclusion

The landlord is ordered to retain the **\$700.00** security deposit, and pursuant to section 67 of the Act I hereby issue a **monetary order** in favour of the landlord for **\$90.75**.

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: November 14, 2014

Residential Tenancy Branch

