



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlords.

The tenant's application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For a monetary order for damages to the unit;
3. For a monetary order for money owed or compensation for loss under the Act;
4. To keep all or part of the security deposit; and
5. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent or damages?

Are the landlords entitled to monetary compensation for loss under the Act?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to double the security deposit?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on August 15, 2014 and was to expire on August 15, 2015. Rent in the amount of \$1,450.00 was payable on the first of each month. The tenant paid a security deposit of \$725.00. The tenancy ended on November 30, 2014.

The parties agreed a move-in and move-out condition inspection report was completed. The tenant did not sign the report.

The tenant's application

The tenant claims as follows:

a.	Double the security deposit (\$725.00)	\$ 1,500.00
b.	Filing fee	\$ 50.00
	Total claimed	\$ 1,550.00

The tenant testified that the landlords did not return their security deposit within 15 days after the tenancy ending.

The landlords' application

The landlords claim as follows:

a.	Loss of rent for December 1 to 15, 2014	\$ 725.00
b.	Carpet cleaning	\$ 115.50
c.	Cleaning of rental unit	\$ 55.00
d.	Paint	\$ 43.90
e.	Filing fee	\$ 50.00
	Total claimed	\$ 989.40

Loss of rent for December 1 to 15, 2014

The landlord testified that the tenant breached the fixed term agreement by providing notice on October 30, 2014, to end the tenancy earlier than stated in the tenancy agreement.

The landlord testified that on November 1, 2014, they placed advertisements on several local popular websites. The landlord stated they had five showings and there were also two no shows. Filed in evidence are copies of the advertisements.

The landlord testified that they had found one potential renter; however, they did not want to start the tenancy until January 1, 2015. The landlord stated that they did not accept this tenant as they were still hopeful of finding a new renter for December 1, 2014.

The landlord testified that since they were unable to find a new renter by the end of November 2014, for December 1, 2014, they contact the one interested renter and were able to negotiate an earlier tenancy date of December 15, 2014. The landlord seeks to recover loss of rent from December 1 to December 14, 2014, in the amount of \$725.00.

The tenant testified that they gave notice to end the tenancy on October 30, 2014. The tenant stated that they do not believe the landlord did their due diligence to find a new renter for December 1, 2014.

The tenant testified that both parties had placed advertisements on local websites. The tenant stated that they also provided a list of names of potential renters to the landlord which the landlord did not follow up on. Filed in evidence is a copy of a list, the list is not in the form of a letter, email or text.

The landlord argued that they never received any list from the tenant. The landlord stated that they recognize three names on the list. Two of the names were students and found them not to be suitable. The third name they had arranged a meeting; however, the person did not attend. The landlord stated that they did their due diligence when they found a new renter for December 15, 2014.

Carpet cleaning

The landlord testified that the tenant is required by the tenancy agreement to have the carpets cleaned at the end of the tenancy. Filed in evidence is a receipt for carpet cleaning. Filed in evidence are photographs of the carpets.

The tenant agreed that they did not clean the carpets at the end of the tenancy.

Cleaning of rental unit

The landlord testified that the tenant did not clean the oven or the dishwasher and the outside of the kitchen cupboards were left dirty. The landlord stated that the bedroom ensuite was left dirty as the shower had not been cleaned and there was hair on the shower walls and the drain was full of hair. The landlord stated that baseboards were also left dusty. The landlord seeks to recover the cost they paid to have these items cleaned in the amount of \$55.00. Filed in evidence are photographs. Filed in evidence is a receipt.

The tenant testified that the landlord is just being picky as they are upset that they ended the tenancy early. The tenant stated that they believe they left the rental unit clean. The tenant stated that they believe the photographs may have been taken from a previous tenancy.

The landlord argued the photographs were taken after the tenancy ended.

Paint

The landlord testified that the tenant caused damage to the walls when they attempted to fix the nail holes using filler. The landlord stated that when the tenant attempted to paint the filler it did not match the walls and walls were left blotchy. Filed in evidence are photographs of the walls.

The landlord testified that they were able to fix the damage by buying paint and applying additional coats of paint on the area the tenant attempted to paint. The landlord seeks to recover the cost of the supplies to repair the walls in the amount of \$43.90. Filed in evidence is a receipt for paint.

The tenant testified that they purchased the paint the landlord instructed them to buy. The tenant stated that all it required was a couple of additional coats of paint to rectify the problem. The tenant stated that they did not leave the paint behind because the relationship with the landlords had deteriorated.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The tenant's application

The tenant is requesting double the security deposit pursuant to section 38 (6) of the Act, as the landlords did not return the security deposit to the tenant within 15 days after the tenancy ended.

At the end of the tenancy, return of the security deposit is defined in Part 2 of the Act.

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do **one** of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) **make an application for dispute resolution claiming against the security deposit** or pet damage deposit.

...

[Reproduced as written]

[My emphasis added]

In this case, the landlords filed their application for dispute resolution and paid the required filing fee on December 12, 2014, at the Service BC office. I find the landlords made their application for dispute resolution claiming against the security deposit within the statutory timeline. I find the tenant has failed to prove a violation of the Act, by the landlords. Therefore, I find the tenant is not entitled to double the security deposit.

As the tenant was not successful with their application, they are not entitled to recover the filing fee from the landlords.

Landlords' application

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

...

In this case, the evidence of both parties was the tenant gave notice to end the tenancy on October 30, 2014, with an effective vacancy date of November 30, 2014. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was August 15, 2015, as stated in the tenancy agreement.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

The evidence of the both parties was that they both advertised the rental unit on local popular websites. The landlord had five showings of the rental unit and had two no shows.

Although the evidence of the tenant was that they believe the landlord did not due their due diligence to rent the unit sooner, as they provided a list of potential renters to the landlord. The landlord denied receiving any list from the tenant.

Further, the landlord acknowledged three names on the list, two were found not to be suitable as they were students and one did not show up for the scheduled meeting. The landlords found a new renter for December 15, 2014.

I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover loss of rent from December 1, 2014 to December 14, 2014, in the amount of **\$725.00**.

Damages

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

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

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

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Carpet cleaning

In this case, the tenancy agreement contains a term that the tenant must clean the carpets at the end of the tenancy. The tenant admitted that they did not clean the carpets. I find the tenant breached the tenancy agreement and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of carpet cleaning in the amount of **\$115.50**.

Cleaning of rental unit

In this case, I accept the evidence of the landlord that the tenant failed to clean the stove, dishwasher and wipe the exterior of the kitchen cabinets. This is supported by the photographic evidence.

Further, I accept the evidence of the landlord that the bedroom ensuite was not sufficiently cleaned. This is supported by the photographic evidence.

Although the tenant alleged that the photographs may have been taken from a previous tenancy that is not supported by the documentary evidence as the photographs show they were produced between December 5, 2014 and December 9, 2014, as the back of the photographs are date marked.

I find the tenant breached the Act, when they failed to clean the appliances, wipe the exterior of the kitchen cabinets and clean the bedroom ensuite and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of cleaning in the amount of **\$55.00**.

Paint

In this case, the photographs show the walls were left blotchy, when the tenant attempted to make repairs. The tenant did not deny they left the walls in the condition shown in the photographs. This is not normal wear and tear.

Although the landlord was able to fix the damage by applying additional coats of paint, it was the tenants responsibly to ensure the repairs were completed properly at the end of the tenancy.

Further, had the tenant left the paint for the landlords to make the repairs, the landlords would not have incurred additional costs. I find the tenant breached the Act, when they failed to repair the damage to the walls at the end of the tenancy and this caused losses to the landlords. Therefore, I find the landlords are entitled to recover the cost of supplies to repaint these areas in the amount of **\$43.90**.

I find that the landlords have established a total monetary claim of **\$989.40** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$725.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$264.40**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant's application for return of double the security deposit is dismissed.

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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: July 23, 2015

Residential Tenancy Branch

