



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Red Head & Freckles Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenants' application filed February 3, 2015: MNSD; FF

Landlord's application filed July 16, 2015: MND; MNDC; MNR; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenants seek a monetary award in the equivalent of double the amount of the security deposit and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties served each other with their Notice of Hearing documents by registered mail. It was also determined that the Tenants served the Landlord with their documentary evidence by registered mail and that the Landlord served the Tenants with their documentary and electronic evidence by registered mail, both evidence packages were mailed on July 18, 2015.

Issues to be Decided

- Are the Tenants entitled to a monetary award in the equivalent of double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?
- Is the Landlord entitled to a monetary award for the cost of repairs, cleaning the rental unit at the end of the tenancy, and yard work to return the yard to its condition at move-in?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. This tenancy began on December 1, 2012. Monthly rent was \$1,500.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 at the beginning of the tenancy. A move-out Condition Inspection Report was completed and the Tenants moved out of the rental unit on December 30, 2014.

The Tenants' testimony:

- The Tenants gave the Landlords their forwarding address in writing on December 30, 2014, at the move-out condition inspection.
- The male Tenant stated that his English is very bad and that he signed the Condition Inspection Report "in good faith", not understanding that he had signed over the security deposit to the Landlords. He stated that he had no intention of allowing the Landlord to keep the security deposit because the house was clean and the only damage was due to regular wear and tear. The male Tenant testified that he thought he was signing the Condition Inspection Report to indicate that he was there at the inspection.
- Neither Tenant was present at a condition inspection at the beginning of the tenancy. The Tenants did not receive a copy of the move-in Condition Inspection Report completed by the Landlord at the beginning of the tenancy. The Tenants stated that the rental unit was in good condition at the beginning of the tenancy.
- The Tenants stated that there were some cobwebs, but that the house was clean at the end of the tenancy. The Tenants testified that there were a few screw holes or drywall plugs in the walls where pictures had been hung. The Tenants testified that they did not use the fireplace and that the tiles were chipped when they moved in.

The Landlord's testimony:

- The rental unit was "redone" inside and outside just before the Tenants moved in. There was new paint, floors and the bathroom was new. The kitchen counter was not replaced, but most surfaces were like new. The Landlord forgot to send a copy of the Condition Inspection Report completed by the Landlord at the beginning of the tenancy, but the Tenants do not dispute that the rental unit was in good condition.
- The Landlord did not return the security deposit to the Tenants because the male Tenant signed the move-out Condition Inspection Report indicating that the Landlord could keep the security deposit to cover damages and cleaning costs.

- The Landlord's costs were in excess of the security deposit, so the Landlord filed its cross application.
- The Landlord seeks compensation for the following items:
 - a. Lawnmower: The Tenants agreed to maintain the lawn and broke the lawnmower's drive shaft. The Landlord claims for the cost of repair and time/gas to and from the repair shop. \$122.00
The lawnmower was only 2 years old.
 - b. The ceiling lights were missing from the living room and upstairs bedroom. The Landlord claims for the cost of replacing the lights and gas/labour. \$76.00
 - c. The Tenants installed a mirror, using 16 screws. The Landlord claims the cost labour (2 to 3 hours @\$20.00) to repair and repaint the wall. \$50.00
 - d. There were cobwebs in the rental unit, the windows and tracks were not clean, and the rental unit was generally unclean. The Landlord hired a cleaner and seeks recovery of that cost. \$150.00
 - e. The rental unit was still not reasonably clean, but the new tenants were ready to take possession, so the Landlord paid the new tenants to do the remaining cleaning required. \$120.00
 - f. The Landlord had given the Tenants permission to put in a garden, with the understanding that the yard would be returned to its original condition at the end of the tenancy.
 - g. The Tenants left the back yard and side yard in "desperate condition", with stones, boards and plants to remove. New grass seed had to be sown because the estimate for the cost of new sod was \$945.00. The estimates for the remaining work were also too high (\$400.00 - \$500.00, after junk was removed). The Landlord did the work instead and claims for the cost of labour and materials. \$600.00
 - h. The Landlord seeks to recover the cost of 12 slate tiles to replace the chipped tiles on the fire place. \$50.00
 - i. The Tenants left the outside hose on over winter. The water froze and broke the faucet. The Landlord seeks the cost of a new faucet, together with his labour (1 hour). \$51.00
 - j. The lawn had not been cut "for months", which was the Tenants' responsibility. The Landlord seeks compensation for the cost of mowing the lawn at the end of the tenancy. \$30.00
 - k. The Landlord seeks compensation for scratches in the wood floor

caused by the Tenants' carelessness	\$50.00
l. The Landlord seeks to recover the cost of repairing the walls in the kitchen and master bedroom, as well as touching up the bathroom cabinet.	\$50.00
m. The Landlord seeks to recover the cost of 3 USB sticks which contain photographic evidence.	<u>\$23.00</u>
TOTAL claim	\$1,372.00

- The Landlord provided copies of receipts in evidence, along with a copy of the move-in Condition Inspection Report completed by the new tenants and the Landlord on December 30, 2014.

The Tenants' response:

- The lawnmower was operational at the end of the tenancy. The Tenants did not agree to pay for repairs, which the Landlord said would be only \$10.00.
- The grass was cut regularly, but the grown was frozen when the Tenants moved, so they did not mow the lawn. The grass was only 2 inches high.
- The Tenants were not allowed sufficient time to finish cleaning. The Landlord did a move-in inspection with the new tenants two hours after the Tenants' move-out inspection was done.
- The Tenants removed the plant beds and most of the plants, but left the boards.
- The Tenants agree that they are responsible for the cost of replacing the outdoor water faucet.
- The scratches on the wood floors and the damage to the bathroom cabinet were from normal wear and tear.
- One of the glass lamps was missing at the beginning of the tenancy. The Tenants agree that they are responsible for the cost of replacing the one in the living room.
- The Tenants agreed that they had mounted a mirror on the wall, but stated that it "wasn't dangerous".

Analysis

Regarding the Tenant's Application:

Section 38(1) of the Act provides that (unless a landlord has the tenant's **written consent** to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

(my emphasis added)

In other words, a landlord may not keep the security deposit without the Tenant's written permission or an Order of the Director allowing the Landlord to apply the security deposit towards damages or unpaid rent.

Section 38(5) of the Act provides that the right of a landlord to retain all or part of a security deposit does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage has been extinguished under Section 24(2) of the Act (*landlord failure to meet start of tenancy condition report requirements*).

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, I find that the Landlord extinguished its right to claim against the security deposit for damages because the Landlord did not comply with Section 24(2) of the Act. However, I find that the Tenants provided the Landlord with written consent to retain the security deposit. The Landlords did not return the security deposit within 15 days of receipt of the Tenants' forwarding address in writing because they had the Tenants' written consent to keep it. I find that the Tenants are not entitled to the doubling provision under Section 38(6) of the Act, but that they are entitled to return of the security deposit in the amount of **\$750.00**.

The Tenants have been partially successful in their Application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

The Tenants have established a total monetary award in the total amount of **\$800.00** against the Landlord.

Regarding the Landlord's Application:

This is the Landlord's claim and therefore the Landlord has the burden of proof to establish its claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results from the breach. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

There is no provision in the Act for either party to recover the cost of preparing for a Hearing and therefore the Landlord's claim for \$23.00 for the cost of USB sticks is dismissed.

With respect to the Landlords' remaining claims, I make the following findings:

1. Lawnmower repairs: I find that the Landlord did not provide sufficient evidence that the damage to the lawnmower occurred due to the actions or neglect of the Tenants in violation of the Act. There was insufficient evidence that the Tenants abused the lawnmower (for example, a letter from the repairman to that effect). This portion of the Landlord's claim is dismissed.
2. Missing ceiling lights: Sections 23 and 35 of the Act require landlords to complete a condition inspection report in accordance with the regulations at the beginning and at the end of the tenancy. Section 21 of the regulation states that a condition inspection report completed in accordance with the regulation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless there is preponderance of evidence to the contrary. In this case, the Tenants acknowledge damaging one of the lights during the tenancy but stated that the other light was missing at the beginning of the tenancy. I find that the Landlord did not provide sufficient evidence that both of the lights were broken during the tenancy. Therefore, I find that the Landlord is entitled to recover half of its claim, in the amount of **\$38.00**.
3. Landlord's claim for damage resulting from removal of the mirror: The Tenants took responsibility for installing the mirror and using screws to do so. I find that the Landlord is entitled to recover the cost of repairing the wall and removal of

the mirror and that the Landlord's monetary claim is reasonable. Therefore, I allow **\$50.00** for this portion of the Landlord's claim.

4. Claims for cleaning the rental unit: Section 37 of the Act requires a tenant to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Based on the documentary evidence provided (a copy of the new tenant's move in Condition Inspection Report and receipts from the cleaning company and the new tenant), I find that the Landlord has proven this portion of their claim in the total amount of **\$270.00** (\$150.00 + \$120.00).
5. Landlord's claim regarding yard work and junk removal: If a tenant makes changes to the rental property during a tenancy, the tenant is expected to return the rental property to its original condition at the end of the tenancy unless the landlord agrees otherwise. In this case, I find that the Tenants did not return the yard to its original condition at the end of the tenancy. The Landlord provided copies of estimates in evidence. I find that the Landlord's claim in the amount of **\$600.00** is reasonable and I grant the Landlord this portion of their claim. I dismiss the Landlord's claim for the cost of mowing the lawn, in the amount of \$30.00, because I find that it falls within this award for yard work.
6. Landlord's claim for replacing slate tiles: I find that the Landlord did not supply sufficient evidence that the Tenant damaged the fireplace tiles. In any event, the Landlord stated that the tiles were approximately 40 years old and are probably nearing the end of their useful life. This portion of the Landlord's claim is dismissed.
7. Cost of new faucet: The Tenants did not dispute this portion of the Landlord's claim and therefore it is allowed in the amount of **\$51.00**.
8. Damage to new wood floors: Based on the photographs provided in evidence, I find that the damage to the new wood floors is more than reasonable wear and tear. I find that the Landlord's monetary claim is reasonable and allow this portion of the Landlord's claim in the amount of **\$50.00**.
9. Cost of repairing walls and touching up the bathroom cabinet: I find that there is insufficient evidence that these damages are beyond reasonable wear and tear. This portion of the Landlord's claim is dismissed.

The Landlord has established a monetary award of **\$1,059.00**, calculated as follows:

Ceiling light	\$38.00
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Mirror damage	\$50.00
Cleaning	\$270.00
Yard cleanup, grass repair and junk removal	\$600.00
New faucet	\$51.00
Damage to wood floors	<u>\$50.00</u>
TOTAL	\$1,059.00

The Landlords have been partially successful in their Application and I find that they are entitled to recover the **\$50.00** filing fee from the Tenants. The total monetary award for the Landlord, after recovery of the filing fee is **\$1,109.00**.

Set-off of Awards:

I hereby set off the Tenants' monetary award against the Landlord's monetary award and provide the Landlord with a Monetary Order in the amount of **\$309.00** for service upon the Tenants.

Conclusion

I hereby provide the Landlord with a Monetary Order in the amount of **\$309.00** for service upon the Tenants. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: August 31, 2015

Residential Tenancy Branch

