Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD
Landlord: MNSD, MNDC, MND, FF

Introduction

The proceeding was reconvened on this date subsequent to the start of proceedings and adjournment on June 16, 2015, accompanied by an Interim Decision.

The hearing is in response to cross applications by the parties for Monetary Orders pursuant to the *Residential Tenancy Act* (the Act). The tenant filed their application on October 23, 2014 pursuant to the Act for Orders as follows:

1. An Order for the return of the security deposit - Section 38

The landlord subsequently filed their application May 25, 2015 for Orders as follows:

1. A Monetary Order for damages – Section 67
2. A Monetary Order for loss or money owed – Section 67
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended both conference call hearings, provided testimony and were given opportunity to present their evidence orally and in written or documentary form, and to cross-examine the other party, and make submissions to me. Both parties acknowledge having received the evidence of the other. Both named parties were represented by their representative / agent and did not testify. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?
Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

Both parties provided an abundance of evidence not all of which is relevant to their claims. The relevant evidence in this matter is as follows. The tenancy began in October 1996. At the outset of the tenancy the landlord collected a security deposit in the amount of $350.00 which the landlord retains in trust. The tenancy ended August 31, 2014 upon the tenant vacating. The parties agree there were no mutual condition inspections conducted in accordance with the requirements of the Act at the start or end of the tenancy, but regardless disagreed in how the security deposit should be administered at the end of the tenancy. The parties agreed that efforts to resolve the matter of the deposit were made to no avail. It is undisputed that the tenant sent the landlord their written forwarding address in letters dated September 16 and 22, 2014, which the landlord testified they received on return from a period overseas October 19, 2014. The tenant subsequently filed for dispute resolution which the landlord acknowledged receiving late October 2014 and filed their own application 7 months later May 25, 2015.

The tenant seeks for the return of the security deposit and accrued interest, and double the original deposit amount as per Section 38 of the Act.

The landlord claims the tenant caused damage to the rental unit during the eighteen (18) years of the tenancy, to the extent the landlord determined to replace carpeting due to the tenant's smoking during the tenancy, for which they submitted an invoice for $1158.00. The landlord and tenant agree the carpeting was new when installed at the outset of the tenancy in 1996, and the landlord claims the carpeting as of durable construction.

The landlord claims they paid $140.00 for *disposal* of the refrigerator of the rental unit – which they claim contained mold.

The landlord also claims they replaced multiples of the wall electrical switches, receptacles, and wall plates in the unit and installed 2 light fixtures in the bathroom and dining room respectively. The landlord explained the electrical wall hardware operates

normally and responded to cleaning, however had residual “nicotine tar” inside them, for which they were replaced. The landlord further claims the tenant removed the respective light fixtures. The landlord provided an invoice for $720.00 in respect to the electrical hardware costs and their installations.

The landlord additionally claims that during the course of the tenancy they purportedly credited the tenant on 3 separate occasions - in the sum of $175.00 - for a floor renovation and repairs of 2 leaks, to be completed by the tenant. The landlord determined the work was not performed and therefore seeks return of the $175.00.

The landlord’s application claims they owe the tenant $167.28 in overpayments of rent during the course of the tenancy – which they calculated offset their gross claim of $2193.00.

The tenant’s agent does not dispute the tenants were smokers and that residual smoke remained on surfaces. They agreed the carpeting was almost 18 years old and that they were told it would be replaced before the unit was re-rented. The tenant disputes they are responsible by any conduct or neglect for any issues with the refrigerator, nor are they responsible for the cost of the landlord’s disposal of it. The tenant further disputes the landlord’s claim for replacement of electrical wall switches and receptacles due to nicotine inside them. The tenant testified that the wall hardware always functioned properly and they did not detect the presence of nicotine inside the hardware. They also testified they were told by the landlord’s own electrical contractor that the plastic wall hardware discolours over time. The tenant disputes the tenant removed light fixtures and that all fixtures were present at the end of the tenancy. The tenant disputes the landlord‘s claim they credited the tenant for any work to the unit. The tenant did not dispute the landlord’s claim on application voluntarily returning overpayments of rent totalling $167.28.

Analysis

All references to statutes and other references may be accessed at **www.gov.bc.ca/landlordtenant** .

On the preponderance of all the relevant evidence submitted I find as follows:

Landlord’s claim

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim on a balance of

probabilities. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or the *Act*, verification of the actual loss or damage claimed and proof that the party took reasonable measures to mitigate or minimize their loss. It must further be emphasized that the landlord must provide sufficient evidence that the costs for which they claim compensation are for conditions beyond reasonable wear and tear for the length of the tenancy – which in this matter is a considerable duration. Moreover, that damage is the result of the conduct of the tenant in contravention of the Act or tenancy agreement. **Section 7** of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the landlord must satisfy each component of the test below:

1. Proof the loss exists, or proof of a loss,
2. Proof the damage or loss occurred *solely* because of the actions or neglect of the respondent tenant in violation of the *Act* or tenancy agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant landlord followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

Again, the landlord bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence verifying the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to minimize the losses incurred – referred to as *mitigation.*

In this matter, if I were to accept that the tenant caused damage to the rental unit

carpeting, it must be noted that **Residential Tenancy Policy Guideline #37 – Table 1** – **Useful life of Work Done or things Purchased**, (also referred to as a Depreciation Table), generally prescribes the useful life of carpeting as 10 years. I find the landlord's evidence respecting the age and claimed construction of the carpeting when factored by reasonable wear and tear considerations over 18 years is insufficient to support the carpeting had a measurable useful life by the end of this tenancy. As a result, upon mitigation of the landlord's claimed loss, taking into account the useful life guidelines and its ultimate depreciation - as required by Section 7(2) of the Act - I find the landlord's claim for carpeting would result in residual compensation of 0% of the carpet value or $0.00. Therefore, I effectively must **dismiss** this portion of the landlord's claim.

The landlord has not met the test for damage or loss in respect to verification of their claim for disposal of the refrigerator. If I were to accept the landlord's rationale for its disposal, it remains that the landlord has not provided evidence to support they expended the claimed amount for the disposal, nor that solely the tenant's conduct was responsible for matters resulting in this portion of their claim. As a result, I find the landlord has not proven this portion of their claim and I must **dismiss** it.

The landlord has not met the test for damage or loss in respect to verification of their claim they credited the tenant for work which was later determined as purportedly uncompleted. As a result, I must **dismiss** this portion of the landlord's claim.

I find the evidence is that at the end of the tenancy the landlord's electrical wall hardware operated as intended and it was available to the landlord to further mitigate their claim, as required by Section 7 of the Act, and restore their appearance with cleaning. The onus was on the landlord to prove the tenant damaged the electrical hardware items replaced. I find the landlord's reason: the items required replacement due to nicotine in them and rendering them damaged and unusable, as improbable. I further find the landlord has not proven the tenant removed 2 light fixtures in the unit. In the absence of a move out condition inspection report – concurred by both parties as to missing light fixtures, I find the landlord's photographic evidence of a wall receptacle and an empty ceiling fixture connection box is insufficient to establish a loss exists or that the tenant damaged the electrical wall hardware or removed light fixtures. As a result, I **dismiss** this portion of the landlord's claim with the effect the landlord's claims for compensation are all **dismissed.**

Tenant's claim

Section 38(1) of the Act provides as follows **(emphasis mine)**

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Section 90(a) of the Act states that if one party gives the other party a document by mail, it is deemed received on the 5th day after it is mailed. The landlord claims they did not receive the tenant's forwarding address until later on October 20, 2014 because they were overseas. I find it was available to the landlord to provide supporting evidence to corroborate this claim but did not. Therefore in the absence of such evidence I must rely on the provisions of Section 90 of the Act in finding the landlord was in possession of the tenant's forwarding address on the 5th day after the last agreed written forwarding address document was sent to the landlord September 22, 2014. I find the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of being in receipt of the tenant's forwarding address in writing on September 27, 2014 and is therefore liable under section 38(6), which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $350.00 and was obligated under **Section 38** to return this amount with all accrued interest as prescribed by Section

38(1)(c) of the Act and Regulations. It must be known that an *Interest Calculator* for deposits held in trust by a landlord, and in accordance with the Regulations, can be utilized at **www.gov.bc.ca/landlordtenant.** In this matter accrued interest is in the aggregate amount of $49.14. The amount which is *doubled* is solely the original amount of the deposit of $350.00. As a result I find the tenant has established an entitlement of $749.14.

The landlord's application claims they owe the tenant a debt comprised of the tenant's overpayments of rent - in the sum amount of $167.28. The tenant does not dispute the landlord's calculation or their aim to return it to them; therefore, I find it appropriate to allocate this amount to the tenant, as intended by the landlord.

As a result of all the above, the tenant is awarded the sum of **$916.42.**

Conclusion

The landlord's application is effectively **dismissed** in its entirety.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$916.42**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 26, 2015

Residential Tenancy Branch