



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

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

For the tenant: MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit caused by the tenant, and unpaid utilities, and for recovery of the filing fee paid for this application.

The tenant applied for a monetary order for a return of her security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

This hearing began on June 25, 2015, and dealt with the landlord's presentation of evidence in support of his application and the tenant's response to the landlord's application. The hearing was adjourned due to time constraints.

An Interim Decision, which was entered on June 29, 2015, should be read in conjunction with this Decision and further, it is incorporated by reference herein.

The parties were informed at the original hearing that the hearing would be adjourned in order to hear from the landlord's witness and to consider the tenant's application.

During the original and reconvened hearings, the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to a return of her security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement shows this tenancy began on November 1, 2013, monthly rent was \$1275.00, and the tenant paid a security deposit of \$637.50. I also heard evidence the tenancy began the year prior to this date.

The evidence showed that the tenancy ended on October 31, 2014.

This rental unit was on the upper level of a home and the landlord also rented the lower level of the home to other tenant(s). The written tenancy agreement shows that water was included with the monthly rent; however, the tenant was responsible to pay for 60% of hydro usage, apparently shared with the lower level tenant.

Landlord's application-

The landlord's monetary claim was listed as follows:

Gardening service	\$89.25
Water bill	\$80214
Hydro bill	\$71.78
Hydro bill	\$35.89
Appliance service	\$284.20
Pest control	\$350.00
Wall and ceiling damage	\$750.00
Carpet replacement	\$2375.00
Cleaning, tile floor; deck	\$200.00

The landlord's relevant evidence included, but was not limited to, photographs, a written statement, a written note to the tenant regarding the washing machine, a note to the tenant regarding water usage, a gardening service invoice, copies of utilities bills, an appliance repair invoice, a pest control bill, a carpet invoice from installation prior to the tenancy, a written statement from a cleaner, a handwritten notice to the tenant advising her the landlord was ending the tenancy as he intended on occupying the rental unit, and statements from the tenant living in the lower unit.

The landlord confirmed there was no move-in or move-out condition inspection report.

The participants provided the following evidence in support of, and in response, to the landlord's application:

Gardening service-

The landlord submitted that the tenant damaged the hedges, which caused the landlord to hire a gardener for repair. The landlord submitted that the tenant emptied soil and cat litter into the hedges.

In response, the tenant and/or her legal counsel submitted the tenant had no idea to what damage the landlord was referring, although she thought the hedges looked odd when the downstairs tenant vacated during the summer.

Water bill-

The landlord submitted that the tenant caused excessive water usage due to filling a pool and a child's water slide. The landlord claimed that during this period of time, the water bill was \$150.00 to \$200.00 over the normal amount. The landlord submitted that he had a plumber attend the rental unit and no leaks were found. Due to the tenant's misuse of water, the landlord submitted she should pay for 60% of the water bill.

In response, the tenant submitted that the landlord attended the rental unit and yelled at her children. The tenant submitted further that the landlord arrived with a plumber, who discovered a leak from the toilet, which was fixed by the plumber, with instructions to the tenant about any future repair.

Hydro bill-

The landlord submitted that this bill for August and September arrived in October, and was never submitted to the tenant.

In response, the tenant submitted that although she never received the bill, she agreed to pay the bill.

Hydro bill-

The landlord confirmed that he did not send this bill in as evidence, and that his claim was an estimate.

Appliance service-

The landlord submitted that the tenant's negligence caused damage to the washing machine, which was in the laundry shared with the lower level tenant. The landlord submitted further that the tenant left the washing machine full of water, and did not tell the lower level tenant or the landlord. According to the landlord, the other tenant thought the machine had stopped, and when it was turned back on, the pump and belt broke. The landlord submitted further that a child's sock was caught in the motor of the washing machine, causing the damage.

The tenant submitted that she was unaware that the washing machine had broken, and only heard about it from the landlord, who advised her thereafter to place small items in a laundry bag for washing.

Pest control-

The landlord submitted that the tenant caused rat problems due to leaving cat food and debris outside, as well as having a cat stand next to an open window, allowing easy access for rats. The landlord submitted further that there was no evidence of rats in the lower level rental unit or the attic.

In response, the tenant submitted that she did not know what happened in the rental unit after she vacated; however, there were no rat droppings or signs of a rat when she lived there, pointing out that the date of the pest control invoice was after the tenancy ended.

Wall and ceiling damage-

In support of this claim, the landlord submitted that he was still gathering evidence and that costs to repair were increasing. The landlord stated that there were stars on the ceilings, holes and patches on the wall, and that he would most likely have to paint the trim. The landlord stated that the costs could go as high as \$1500.00.

In response, the tenant's legal counsel pointed out that none of these issues were disclosed on a move-out condition inspection report and that any holes from pictures were dealt with by patching.

Carpet replacement-

The landlord submitted that the carpet was installed approximately 7-8 months prior to the tenancy, and that due to the damage caused by the cat urine, he would have to replace about 80% of the carpet.

In response, the tenant's legal counsel submitted there were no issues with the carpet on a move-out condition inspection report, the landlord's mother was there at the end of the tenancy, and that there evidence of a cleaning receipt shows the rental unit was clean and damage free.

Cleaning, tile floor; deck-

The landlord submitted that his original claim was an estimate, and that the actual invoice was for \$400.00. The landlord submitted that the grout was still dirty as of the day of the hearing, and that he had photos of these items when the tenancy began.

In response, the tenant submitted that the rental unit was professionally cleaned and left in immaculate condition.

Landlord's witness-

The landlord's witness submitted that at the beginning of the tenancy, he acted as agent for the landlord, as the landlord was living out of province at the time. The witness submitted that the rental unit had been newly renovated prior to the tenancy and that the tenant agreed that the photographs taken for selling the home would be proof of the state of the rental unit at the beginning of the tenancy.

The landlord's witness submitted further that he had observed the rental unit was not always clean and tidy, that garbage was left out, and that the tenant's pet had jumped in his lap. The witness submitted further that the carpet had to be replaced and that the oven had rat feces inside.

In cross examination, the tenant's legal counsel had the landlord's witness confirm that there was no move-in condition inspection report and that there was not a pet restriction clause in the written tenancy agreement.

In final submission, the tenant's legal counsel submitted that the tenancy agreement provided for laundry usage, that water usage was included with the monthly rent per the tenancy agreement, and that no one used the wading pool, the source of the alleged over usage of water.

As to the pet, the tenant's legal counsel submitted that the landlord's mother and witness both knew that the tenant had a pet, and nothing was ever mentioned to the tenant during the tenancy.

The tenant's legal counsel submitted further that their evidence showed the rental unit, including the carpet, was professionally cleaned at the end of the tenancy.

In response to the tenant's legal counsel's submissions, the landlord submitted that everything the tenant submitted was from her friends and family, so he imagined the cleaning invoice was from a friend.

The landlord submitted further that the carpet reeked of urine and the carpet was ruined.

Tenant's application-

The tenant's monetary claim is \$2550.00. In explanation, the tenant submitted that the claim was comprised of her security deposit of \$637.50, doubled, a refund of the last month's rent for having received a notice from the landlord to vacate in 2 months, and damages for harassment.

The tenant's relevant evidence included written particulars of the claim, the written tenancy agreement, a copy of the tenant's written notice that she was ending the tenancy, an invoice from a cleaning company, character reference letters, a letter from a witness giving a description of the rental unit on the last day of the tenancy, and a letter from a realtor assisting in the tenant's move, giving a description of the rental unit on the last day of the tenancy.

The tenant submitted that the landlord was provided with her written forwarding address in a letter from her legal counsel, on October 16, 2015.

The tenant submitted further that she is entitled to receive compensation equal to 1 month's rent due having received the landlord's notice on September 30, 2014, that she was to vacate the rental unit by November 30, 2014.

The tenant submitted further that she is entitled to a return of her security deposit, doubled, as the tenant and her legal counsel requested, but did not receive a condition inspection report and therefore the landlord's right to retain the security deposit was extinguished.

The tenant submitted further that she is entitled to compensation as the landlord's course of conduct, including shouting at the tenant and being verbally aggressive towards the tenant, is considered harassment.

Analysis

Landlord's application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Gardening service; wall and ceiling damage; carpet replacement; pest control; cleaning, tile floor; deck-

As to the landlord's claim for the above alleged damages by the tenant, section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

In a case such as this where a landlord is claiming that the tenant damaged the rental unit beyond reasonable wear and tear, a key component in establishing a claim for such damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, it is undisputed that the landlord has failed to meet his obligation under of the Act of completing the inspections and providing reports, which

would show a record of and tend to prove the condition of the rental unit prior to the tenancy and after the tenancy ended. It is important that a tenant is provided an opportunity to note their version of the condition of the rental unit, and in this case, there was no such opportunity.

I also could not rely upon the landlord's photographs as proof, as there were no identical shots of the same item or location at the start and end of tenancy. In some cases, the photographs were of such an extreme close-up of the item, it was not clear if this was alleged damage or reasonable wear and tear. In another case, the landlord showed the back of the refrigerator, presumably at the end of the tenancy, when no photograph was provided from the beginning of the tenancy.

I also took into account that the landlord supplied no proof that he has incurred an expense for carpet replacement.

Further, I was persuaded by the tenant's evidence showing that the rental unit and carpet were professionally clean, which led me to the conclusion that the tenant complied with her obligation under the Act.

I also find that the landlord failed to submitted sufficient evidence that the tenant caused rats to come into the rental unit, and at any rate, this discovery was made well after the tenancy ended, as noted by the evidence.

Due to the lack of a compliant condition inspection report taken at the beginning of the tenancy, or other evidence of the state of the rental unit, including dated and provable photographs, other unsupported evidence as noted above, and the disputed verbal evidence of the parties, I find the landlord submitted insufficient evidence to support his claim for repairs, damage to and cleaning for the rental unit and I therefore dismiss this portion of the landlord's application.

Appliance service-

In this case, I considered whether or not the tenant was negligent, which is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

In the case before me, I find the evidence supports that the tenant was using the washing machine for its intended purpose and therefore was not negligent. I also considered that although the landlord submitted that a child's sock was caught in the pump, the landlord's invoice does not support that statement. In the case of shared

laundry facilities with another tenant, I find the landlord submitted insufficient evidence to support that the tenant was negligent or caused damage to the washing machine.

I dismiss the landlord's claim for washing machine repair.

Water bill-

I find the landlord submitted insufficient evidence that the tenant caused excessive water usage. The tenant submitted that she was informed there was a leak in the toilet and had this not been the case, as claimed by the landlord, I would expect the landlord to supply evidence from the plumber attending the rental unit to support the landlord's statement.

I also viewed the landlord's photographic evidence of a wading pool, and saw only a very small, collapsed child's play pool. I cannot find that the landlord supported that even if the tenant filled this tiny pool, his water bill would have increased by the amounts claimed.

Due to the landlord insufficient evidence, I dismiss his claim for reimbursement of a water bill.

Hydro bill, August and September -

The tenant agreed that she owed this amount and I therefore approve the landlord's claim for \$71.78.

Hydro bill, October-

The landlord did not submit verification of this claim, and I therefore find he submitted insufficient evidence to support his claim. I dismiss the landlord's claim for an estimated hydro bill for October.

I also decline to award the landlord recovery of his filing fee, as I have dismissed all claims, with the exception of reimbursement of the August and September hydro costs, which was not submitted to the tenant prior to filing his application.

Due to the above, I find the landlord is entitled to a monetary award of \$71.78.

Tenant's application-

Security deposit, doubled-

Under section 38(1) of the Act, within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence was that the tenancy ended on or about October 31, 2014, and the landlord was provided her written forwarding address in a letter from the tenant's legal counsel on October 16, 2014.

Additionally, when a landlord fails to properly complete a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the landlord's application claiming against the security deposit was filed on November 14, 2014, within 15 days of the end of the tenancy and receiving the tenant's written forwarding address. Although the landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the landlord's application also included a claim for unpaid utilities.

Residential Tenancy Branch Policy Guideline 17 suggests that the landlord may make a claim against the security deposit for any other monies owing other than for damage to the rental unit, even in the light of sections 24 and 36 of the Act.

As part of the landlord's claim was not for damage to the property but for unpaid utilities, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. The tenant is therefore not entitled to double recovery of the security deposit, and I dismiss that portion of the tenant's application.

Although I find the tenant is not entitled to double her security deposit, I find the tenant is entitled to a return of her security deposit of \$637.50, less the monetary award of the landlord.

1 Month's monthly rent compensation-

Section 51 of the Act provides as follows:

(1) A tenant who receives a notice to end tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the landlord did not serve or issue such a 2 Month Notice on the Residential Tenancy Branch ("RTB") approved form to the tenant; rather, the landlord served a typewritten, 1 page notice drafted by the landlord to the tenant that she was to vacate the rental unit.

Under the Act a tenant cannot be compelled to vacate a rental unit at the written request of the landlord and not on the approved form. The tenant therefore had the choice to stay and wait for a proper 2 Month Notice. Instead the tenant secured alternate accommodations and informed the landlord she would vacate the rental unit by October 31, 2014.

As the tenant was not issued a 2 Month Notice, under section 49 of the Act, I find she is not entitled to any compensation and I therefore dismiss her claim for the equivalent of 1 month's rent.

Compensation for harassment-

I find the tenant submitted insufficient evidence of alleged harassment and I therefore dismiss this unspecified claim.

I also allow the tenant recovery of their filing fee of \$50.00 paid for this application, pursuant to section 72(1) of the Act.

Both applications-

I have awarded the landlord compensation for unpaid hydro in the amount of \$71.78. I direct that he retain this amount from the tenant's security deposit of \$637.50, leaving a balance owing to the tenant in the amount of \$565.72.

I grant the tenant a monetary award of \$615.72, comprised of the balance of her security deposit, or \$565.72, and for recovery of the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$615.72, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application was granted in small part, with the rest of his application being dismissed without leave to reapply.

The tenant's application is granted in part as I have granted her a monetary order of \$615.72.

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: September 21, 2015

Residential Tenancy Branch

