



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O; MSND, FF

Introduction

This hearing dealt with the landlord's application, filed 28 April 2015, pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- an "other" remedy.

The landlord did not set out any "other" remedy that was not encompassed within the other enumerated claims. As such, I have not considered the landlord's claim for an "other" remedy.

This hearing also dealt with the tenant's application, filed 10 December 2014, pursuant to the Act for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. The landlord was assisted by her daughter BD (the agent). The landlord elected to call one witness RN.

At the landlord's request, she was permitted to attend in person. The tenant attended by teleconference. I explained to the tenant the potential drawbacks to convening the

hearing with only one party in attendance and the other appearing by telephone and asked the tenant if he consented to proceeding. The tenant consented.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of a portion of his security deposit? Is the tenant entitled to a monetary award equivalent to the amount of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the Act? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began 1 September 2006. The parties entered into a written tenancy agreement on 14 January 2008. The tenancy agreement set out that monthly rent of \$1,300.00 was due on the first. The tenancy agreement sets out the following with respect to responsibilities for repairs:

****In addition to the rent, the Tenant is responsible for utilities, parking, any party room rentals, or any damages caused by the Tenant or any of his friends or visitors to any part of the property at the above address.*

****In addition, upon termination of this contract, the Tenant is responsible for returning the following in reasonable and good condition: 1. Stove 2. Fridge 3. Dishwasher 4. Washer and Dryer 5. Light Fixtures (all) 6. Fireplace 7. Vent/Fan 8. Cabinets/Counters 9. Floors/Tiles 10. Carpets 11. Window Binds 12. All Bathroom and Kitchen fixtures....(and all other items, as indicated in the original contract from September, 2006.*

I was not provided with the September 2006 tenancy agreement.

The tenant testified that he was urgently seeking a rental unit at the end of August as his housing situation had changed quickly. The tenant testified that he paid a security

deposit in the amount of \$800.00. The landlord testified that the tenant voluntarily paid this excess amount. The tenant testified that the landlord asked for this amount in excess of the statutory amount.

I was provided with a copy of a condition move in inspection report. The report is dated 1 September 2006. There is nothing remarkable about the report.

On 19 November 2013, the tenant provided his notice to end the month-to-month tenancy. The notice included the tenant's forwarding address. The tenant provided sworn testimony that he sent this notice by regular mail to the landlord. The tenant testified that he telephoned the landlord the subsequent week to confirm his notice. The tenant testified that the landlord confirmed receipt. The notice set out an effective date of 31 December 2013. The agent testified that the tenant told the landlord that he would vacate the rental unit early on 21 December 2014. The tenant indicated to the landlord that he believed he would be able to vacate the rental unit sooner, but was unable to as a result of illness.

The agent testified that the tenant left the blinds dirty. The agent testified that the kitchen was dirty. In particular, the agent testified that the stove hood range was covered in grease. The agent testified that the carpet was full of hair, dirt, and dust. The agent testified that there were cigarette burns on the carpet. The tenant testified that the carpet burn marks were caused by the previous tenants. The agent testified that cigarette smoke permeated the apartment. The agent testified that the balcony was not clean and that there was garbage on the balcony. I was provided with an invoice dated 7 January 2014 in the amount of \$393.75. The invoice sets out that the cost was for removing the blinds and replacing the blinds as well as fixes to the kitchen counter. The witness testified that the rental unit was not clean.

The tenant testified that he had help to clean the rental unit at the end of the tenancy from his mother-in-law and a professional cleaning service.

The tenant testified that he had the carpets professionally cleaned on 7 December 2013. The tenant provided a group buy voucher for steam cleaning for up to three rooms. The market value of the carpet cleaning is set out as \$190.00. The agent testified that the two-bedroom rental unit's carpet could not be cleaned for a \$35.00 internet group buy. The landlord submitted the group buy invoice does not prove that the tenant actually cleaned the carpets. The landlord provided an invoice dated 9 January 2014 in the amount of \$138.60 for carpet cleaning. The invoice notes that there were paint spots on the carpet and filtration stains on the edges and where the furniture sat.

The agent testified that there was a mirror glued to the wall. The landlord testified that this mirror covered a hole in the wall. The witness testified that the mirror was affixed with glue. The witness testified that when he removed the mirror it caused damage to the wall that needed to be puttied. The witness testified that there was a hole in the wall of the laundry room, but not behind the mirror. The witness testified that there was a dent in the wall from the door handle on one of the bedrooms. I was provided with a receipt for paint and drywall repair supplies. The invoice is dated 4 January 2014 and totals \$219.98. The drywall repair supplies total \$18.44. I was provided with an undated receipt from RN for painting and repairing the drywall. The invoice is in the amount of \$1,000.00. The agent testified that the rental unit was last painted in 2006.

I was provided with an electrical services invoice dated 10 March 2014 in the amount of \$118.13. The invoice notes that the service was for repairing a broken receptacle. I was provided with a second electrical services invoice dated 28 February 2014 in the amount of \$219.24. The invoice notes that the service was for fixing a flickering florescent light and installing new ballasts.

The agent testified that the shower head was broken and tiles were broken. The landlord did not provide a receipt for the shower or bathroom tile repairs. The landlord testified that the tile was the original tile.

The agent testified that the glass door to the fireplace shattered. The agent testified that she believed that the door had been tampered with in some way. The agent reviewed a receipt from a fireplace repair company. The agent testified that this was for repairing the glass. Later in his testimony, the witness testified that he replaced the glass. I was provided with an invoice dated 28 February 2014 in the amount of \$1,236.76. The receipt sets out that it was for replacing the thermopile, the pilot assembly, the burner, the glass, the door switch and another part.

The landlord provided me with a receipt from a home repair store including a charge for lightbulbs in the amount of \$11.80 and a \$0.80 environmental fee. The remaining item appears to be an adhesive of some sort. The landlord provided me with a second receipt from a home repair store for \$35.51 for items to repair the balcony door. The agent testified that the lock mechanism on the door was broken. The witness testified that the rollers for the balcony door required application of a lubricant. The third receipt from a home repair store is for some sealant in the amount of \$5.81. The agent testified that the kitchen sink and counter sustained damage. The tenant testified that the damage to the kitchen counter was a result of a leaky faucet. The tenant testified that

the landlord was informed of the damage shortly after it was discovered by contactors working on replacing piping in the rental unit.

The tenant testified that he did not bother reporting minor damage to the landlord because when he did earlier in the tenancy the landlord would ask the tenant to fix it or just make do with the damaged item.

There was no condition move out inspection report created in respect of this tenancy. The agent testified that there was no condition move-out inspection report because the rental unit appeared clean. The landlord testified that she was unable to complete a condition move out inspection report because the tenant “ran away”. The tenant testified that he and the landlord did a thorough walk through of the rental unit and that nothing was brought to his attention at that time. The tenant testified that after the inspection he drove the landlord home. The landlord vehemently denied that this occurred. The same account is documented in the tenant’s letter of 20 May 2014.

The landlord secured a new tenant to begin a tenancy as of 1 January 2015. The agent testified that the landlord did not begin occupation until 15 January 2015 because of deficiencies in the rental unit. The agent testified that the new tenancy was set to begin 1 January 2015. The agent testified that the new tenancy did not begin until 15 January 2015 as the rental unit was not “move in ready”.

I was provided with a document titled “ADENDUM”. The document is in a table form and sets out deficiencies noted in the rental unit. The document was prepared by the subsequent occupant of the rental unit. The document is dated 14 January 2014 and is signed by the landlord and the new tenant.

On 9 April 2014, the tenant resent his forwarding address in writing to the landlord.

In response to the tenant’s letter of 9 April 2014, the landlord sent her letter of 14 April 2014. That letter set out a claim for the following items:

- Fire Place
- Rona
- Rona
- Rona
- Home Repairs
- Steamed Carpet
- Electrical Services
- Electrical Services
- Paint

- Paint and Holes In Walls
- Shower Repair
- Lock and Damages
- Cleaning
- Rental Loss

I was provided with a letter dated 20 May 2014 from the tenant to the landlord. The letter sets out that the tenant provided his response to the damage alleged. The tenant categorically denied the allegations against him.

The landlord and agent provided lengthy testimony that was intended to impugn the tenant's character. None of the evidence provided was relevant. For example, the agent attempted to suggest that the tenant was using the teleconference option as a means of avoiding providing his testimony in person. I reminded the landlord and agent that the face-to-face option was provided to her mother for her benefit as a result of her hearing problems. I informed the landlord that I would draw no negative inference from the tenant's election to appear by teleconference. The landlord repeatedly suggested that the tenant was lying; however, the landlord provided little corroborating evidence of her version of events. I have based my findings on the evidence before me and have not relied on any insinuation of the tenant's bad character made by the landlord or agent.

Analysis

Tenant's Claim

The tenant claims for \$1,659.18:

Item	Amount
Return of Security Deposit	\$800.00
Interest on Security Deposit	29.59
38(6) Compensation	800.00
Interest on Security Deposit x 2	29.59
Total Monetary Order Sought	\$1,659.18

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit.

The tenant has provided evidence that he provided his forwarding address to the landlord on the following dates:

- 19 November 2013 by mail;
- 9 April 2014 by mail; and
- 20 May 2014 by mail.

I find that the landlord was first deemed to have received the tenant's forwarding address on 24 November 2013, when the tenant sent his notice to end tenancy. The landlord has not returned the tenant's security deposit as required and did not file within fifteen days to retain the security deposit. Moreover the landlord's right to claim against the security deposit for damage to the rental unit was extinguished by her failure to complete a condition move out inspection report that complied with the regulations. Accordingly, the tenant is entitled to both return of his security deposit (including interest) and compensation equivalent to the amount of his security deposit.

Subsection 38(1)(c) requires repayment of interest on security deposits. The Branch provides an online calculator for the purpose of determining interest payable: <http://www.rto.gov.bc.ca/content/calculator/calculator.aspx>. The amount of interest payable on the tenant's security deposit collected on 1 September 2006 is \$25.59. The tenant is entitled to payment of this amount.

Residential Tenancy Policy Guideline, "17. Security Deposit and Set off" sets out that:
Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount and is not doubled.

Accordingly, the tenant is not entitled to double the amount of interest on his security deposit.

As the tenant has been successful in his claim, he is entitled to recover his filing fee from the landlord.

The tenant's total monetary award is \$1,675.59:

Item	Amount
Return of Security Deposit	\$800.00
38(6) Compensation	800.00
Interest on Security Deposit	25.59
Recover Filing Fee	50.00
Total Monetary Award	\$1,675.59

Landlord's Claim

The landlord claims for \$4,700.00. The landlord has not provided a monetary order worksheet; however she has set out a list of items for which she is claiming compensation:

Item	Amount
Fire Place	\$1,236.00
Rona	31.99
Rona	5.81
Rona	20.09
Home Repairs	393.75
Steamed Carpet	138.60
Electrical Services	219.24
Electrical Services	118.13
Paint	219.98
Paint and Holes In Walls	1,000.00
Shower Repair	200.00
Lock and Damages	40.00
Cleaning	400.00
Rental Loss	700.00
Total Monetary Order Sought	\$4,723.59

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Residential Tenancy Policy Guideline, 1. Landlord & Tenant – Responsibility for Residential Premises” (Guideline 1) sets out the tenant’s responsibilities:

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*...

...

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

[emphasis added; footnote removed]

Subsection 5(1) of the Act prohibits contracting out of the provisions of the Act and Regulations. Any term that attempts to contract out is of no effect. Accordingly, the tenancy agreement that the tenant and landlord entered into cannot disturb the allocation of responsibility established by the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant’s duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord submits that the tenant caused the damage to the fireplace. The tenant denies any use of the fireplace other than that which would be expected from ordinary use. I have not been provided with any evidence that would show that the tenant caused the damage to the fireplace. I find that the landlord has failed to show, on a balance of probabilities, that the tenant caused the damage to the fireplace. The landlord is not entitled to recover the cost of the fireplace repairs.

Guideline 1 establishes that a tenant is responsible for replacing lightbulbs that burn out in the course of the tenancy. On the basis of the landlord, agent and witness's testimonies, I find that the tenant failed to replace some lightbulbs at the end of his tenancy. This is a breach of section 37 of the Act. I find that by breaching section 37 of the Act, the tenant caused the landlord a loss. The landlord provided a receipt that shows a cost to replace the bulbs of \$11.80 and \$0.80 environmental fee. The landlord has proven her entitlement to \$14.11, the cost of replacing the bulbs.

The landlord has not provided any evidence that the repairs to the balcony door (including the lock) were the result of the tenant's misuse or neglect. The witness testified that the door required application of a lubricant. This is consistent with maintenance required as a result of wear and tear. I find that the landlord has failed to show, on a balance of probabilities, that the damage to the door was the result of the tenant's misuse or neglect. The landlord is not entitled to recover the cost of the balcony door repair.

The landlord testified that the kitchen sink and counter were damaged. The tenant denies that he caused this damage. The tenant testified that the damage was the result of a leaky faucet. I find that the damage was caused by a leaky faucet. I find that the landlord has failed to show that the tenant was negligent in reporting the leak. I find that the leak was reported soon after it was identified. On this basis, the landlord is not entitled to the costs associated with repairing the faucet and counter.

The landlord claims the cost of taking down and rehanging the blinds to clean them. Policy Guideline 1 sets out that a tenant is expected to leave the internal window coverings clean when he or she vacates the rental unit. Guideline 1 sets out that the standard to be met is that established by the Act and is not necessarily that of the landlord. The landlord has not provided me with any photographic evidence of the state of the blinds. Without these I cannot ascertain whether the tenant left the window coverings in a state that was consistent with the Act. I find that the landlord has failed to show, on a balance of probabilities, that the tenant left the blinds in a state that did not comply with the Act. Accordingly, the landlord is not entitled to recover the costs associated with the blinds' cleaning.

Guideline 1 sets out the tenant's responsibility for cleaning carpets:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenant testified that he had the carpets professionally cleaned at the end of the tenancy. The tenant provided a receipt from an internet group buy for carpet cleaning services. The landlord provided testimony that the carpets were dirty at the end of the tenancy. The landlord provided a receipt for carpet cleaning that indicated that there were filtration stains from furniture and paint on the carpet. I find that the tenant had the carpets professionally cleaned at the end of the tenancy. I find that the landlord has not shown that the tenant deliberately or carelessly stained the carpets. Further, the landlord did not provide any photographs of the staining. Without this sort of evidence, I am unable to determine whether the tenant failed to comply with the standards of the Act or merely failed to meet the landlord's standards. I find that the landlord has failed to show, on a balance, of probabilities, that the tenant breached the Act in respect of carpet cleaning.

The invoices provided for electrical services set out the terms of the service, which include replacing a ballast for a fluorescent light and fixing a receptacle. The landlord has provided absolutely no evidence that these repairs were required as a result of the tenant's deliberate acts or neglect. This appears to be a wholesale attempt to transfer the landlord's obligations for upkeep of the rentals unit to the tenant. The landlord is not entitled to recover the cost of the electrical servicing.

The landlord seeks the cost of repainting the rental unit. *Residential Tenancy Policy Guideline* "40. Useful Life of Building Elements" provides me with guidance in determining damage to capital property. The useful life of interior paint is four years. The landlord provided evidence that the rental unit had not been repainted since 2006. The purpose of damage is to return the claimant to his or her original position. As the value of the interior paint had entirely depreciated, the tenant is not responsible for any costs associated with repainting the rental unit.

The witness testified that there was a mirror affixed to a wall with glue in the smaller bedroom. The tenant testified that he did not even know that there was a mirror in that room. I find, on a balance of probabilities, that the mirror was not affixed to the wall by

the tenant. I find that he is not responsible for the damage that occurred when it was removed.

The landlord claims for the cost of general cleaning in the amount of \$400.00. The landlord has not provided any photographs of the state of the rental unit at the end of the tenancy. The tenant testified that he and the landlord conducted a thorough examination of the rental unit at the end of the tenancy. The landlord denies that this occurred. I find the tenant's version of events more plausible. As such, I find that the landlord

The landlord has not provided any evidence of the nature of the damage to the shower. Without this evidence, I am unable to determine whether the damage was the result of the tenant's deliberate actions or neglect. Accordingly, I find that the landlord has failed to show, on a balance of probabilities, that the damage to the shower head and tile was caused by the tenant's breach of the Act or Regulation. The landlord is not entitled to recover the cost of this repair.

The tenant provided proper notice to end his tenancy. The tenant paid his rent in full until 31 December 2013. The tenant was under no obligation to vacate the rental unit early. The landlord has not shown any substantial damage related to the condition in which the tenant left the rental unit. The landlord has failed to show any breach of the Act that would have resulted in the rental loss for January. I find that the rental loss was incurred as a result of repairs that were the sole responsibility of the landlord. The landlord is not entitled to recover her rent loss from the tenant.

As the landlord has largely been unsuccessful, she is not entitled to recover her filing fee from the tenant.

The landlord has proven her entitlement to a total monetary award of \$14.11:

Item	Amount
Lightbulbs	14.11
Total Monetary Award	14.11

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,661.48 under the following terms:

Item	Amount
Return of Security Deposit	\$800.00
Interest on Security Deposit	25.59
38(6) Compensation	800.00
Offset Landlord's Monetary Order	-14.11
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,661.48

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: October 26, 2015

Residential Tenancy Branch