



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNSD, MNDC, FF
Tenant's application: MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted at the Residential Tenancy Branch offices in Burnaby. The landlord and the tenant attended the hearing in person.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenant's security deposit?
Is the tenant entitled to the return of his security deposit, including double the amount of the deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began on April 1, 2013 for a one year fixed term, with monthly rent of \$1,400.00 payable on the first of each month. The tenant paid a security deposit of \$700.00 at the start of the tenancy. After the term expired the tenancy continued on a month to month basis. According to the tenant, the landlord sought to raise the rent to \$1,500.00 when the term expired. He agreed to pay the landlord a \$50.00 increase, exceeding the amount allowed and commenced to pay the increased amount in July, 2014.

The tenant gave verbal notice in January that he intended to move out at the end of March. In her application for dispute resolution the landlord claimed a monetary award in the amount of \$2,483.00. She testified that a new hardwood floor was installed in the rental unit in 2013 before the tenancy began and it was cleaned and painted. The landlord testified that the tenant had allowed flooding to occur in the rental unit and it damaged the hardwood floor causing the wood to lift and become swollen. She said

there was water pooling under the floor and mould under the floor due to the moisture. The landlord submitted a handwritten invoice said to be for the cost of repairs in the amount of \$2,483.25. The invoice was dated May 7, 2015 and contained the following statement:

- | | |
|---|--------|
| 1. –remove living room hard wood floor and fix and finishing | \$450 |
| 2. –paint bathroom bedroom living room and kitchen | \$1300 |
| 3. –change kitchen faucet and fix: | \$365 |
| 4. –fix and finishing other damages. | \$250 |
| 5. Underneath and back of dishwasher was checked it was dry dust
that was produced by operating the machine.
It was swept away and wiped. There was NO mould detected | |

1. Must change toilet \$400 in future and fix the new toilet:

Tax:	118.25
Total	\$2483.25
(reproduced as written)	

The landlord said that the tenant was responsible for a damaged faucet that had to be replaced. She said that he used it improperly and attached water filters to the faucet that damaged it. The landlord said the tenant damaged the paint and drywall by placing hooks on the wall to hang his keys. She claimed for the cost to re-paint the unit. She also claimed that there were missing light bulbs. The landlord testified that the toilet bowl was cracked and that this was new damage caused by the tenant during his tenancy.

The landlord complained that the tenant changed the locks to the rental unit without permission and failed to provide her with a key.

The landlord testified that after the tenant gave notice that he was moving she advertised the rental unit on the internet. She received an inquiry from a prospective tenant and sent the tenant and her daughter to view the unit. The tenant was present at the rental unit when the landlord attended with an elderly man and his daughter to inspect the unit. The landlord said that the tenant spoke to the prospective tenants in their native language. The landlord did not understand what they were saying. Later she asked the tenant for his opinion of the prospective tenants. She said that the tenant told her they seemed to be nice, normal regular people and she should not worry about renting to them. The landlord agreed to rent the unit to the new tenants commencing April 1st.

The landlord said that the new tenants made false claim that there was mould in the rental unit; she intimated that the tenant had colluded with the new tenant in making this false claim.

The landlord also claimed that the tenant was responsible for a \$200.00 move-in fee and he has refused to pay it ever since he moved in. She said she deducted it from his security deposit. The landlord later stopped payment on the cheque.

The tenant testified that he obtained the landlord's permission to change the locks at the beginning of the tenancy and he provided a signed letter confirming that fact. The tenant denied withholding keys from the landlord and said that keys were given to the landlord to allow her access to change an appliance. The tenant said she had an opportunity to make a copy for herself, but failed to do so.

The tenant testified that the rental unit was not properly cleaned when he moved in. He took pictures after he moved in to document the condition of the rental unit at the start of the tenancy; he said they showed that the fridge and stove were not properly cleaned and there was dirt in cupboards and behind the appliances. The tenant testified that he advised the landlord of problems with the rental unit during the tenancy. He told her that the laminate floor tiles were lifting; but the landlord did not bother to inspect the problem and the tenant purchased some glue to make repairs by re-gluing the loose tiles.

After the lease term expired the tenant said the landlord attempted to raise the rent by \$100.00 per month. The tenant agreed to pay a \$50.00 monthly increase and paid the sum of \$1,450.00 per month commencing July 2014.

In January 2015 the tenant notified the landlord that he intended to move out at the end of March. He testified that the landlord advertised the unit for rent and found new tenants; she asked the tenant's permission to show the unit. The tenant met the prospective tenant and his daughter at the rental unit. The tenant said they seemed nice, normal and professional and when the landlord asked his opinion, he confirmed his impressions. The tenant and the prospective tenants shared a common language and spoke briefly in that language during the showing.

The tenant moved out of the rental unit on March 28th. He paid a \$100.00 move out fee for the use of the elevator. On March 29th he met the landlord and the new tenant at the rental unit. There was a friend of the new tenant present who was apparently a contractor. The tenant testified that the landlord said she was satisfied with the condition of the rental unit and she wrote a cheque to the tenant in the amount of

\$500.00 which was intended to be the return of the tenant's security deposit, less the \$200.00 move-in fee that the landlord had been trying to collect from the tenant. The tenant said that he disagreed with the deduction, but he accepted the cheque. The tenant deposited the cheque, but he testified that the cheque bounced because the landlord stopped payment on the cheque. The tenant then gave the landlord a letter dated April 2, 2015 wherein he provided his forwarding address and requested the full refund of his \$700.00 security deposit. The tenant commenced his claim for the refund of his deposit on April 27, 2015. The landlord filed her application on May 13, 2015.

The tenant questioned the landlord's invoice dated May 7, 2015 for work claimed to have been performed; he suggested that it was spurious, and did not represent an invoice for work actually performed. The tenant noted that the invoice made a specific finding that: "There was NO mold detected." He suggested that the invoice may have been produced as a response to the landlord's dispute with her new tenant over the presence of mould in the unit.

The tenant said that there was a problem with the faucet from the outset of the tenancy and the toilet was cracked but serviceable when the tenancy started. The tenant said that the tenancy agreement made no mention of a move-in fee. He paid a fee to the strata corporation to use the elevator when he moved in and moved out, but there was no mention of a \$200.00 move-in fee in the tenancy agreement and the tenant refused to pay the sum to the landlord. The landlord did not submit any documentary evidence to show that she paid a move-in fee to the strata corporation.

The tenant testified that the landlord inspected the rental unit on March 28th and declared it to be in satisfactory condition when she gave him a cheque for the balance of his deposit. The landlord testified that she did not notice the extent of damage to the rental unit before she wrote the tenant a cheque. She stopped payment after she discovered the damage to the rental unit. She said that she tried to get the tenant to attend to conduct an inspection on March 30th, but the tenant refused to do so.

Analysis

The landlord did not provide a move-in condition inspection to show the condition of the rental unit when the tenant moved in. The landlord created a move-out report on March 30th, but the tenant was not involved in any inspection on that day. I find that the landlord's move-out report is of no value in establishing the condition of the unit at move-out. The tenant did not participate in the inspection; he had already moved out of the rental unit, the unit was re-rented to new tenants and the landlord had already declared the unit to be in acceptable condition and refunded his deposit. The landlord

submitted an invoice for what were alleged to be repairs to the rental unit. I do not accept that the amounts are a legitimate statement of costs incurred to repair damage to the rental unit caused by the tenant and I deny the landlord's claim for the sum of \$2,483.25.

The tenancy agreement did not provide that the tenant was responsible for a move-in fee in the amount of \$200.00 or any lesser amount and I do not allow this claim. The landlord has not provided evidence that she paid this fee. The landlord's application is dismissed without leave to reapply.

The tenant applied for the return of his security deposit, including double the amount of the deposit.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenant provided his forwarding address to the landlord in writing on April 2, 2015. The landlord acknowledged receiving the letter. The tenant filed his application seeking the return of his deposit on April 27, 2015. The landlord did not return the deposit and did not file her application to claim the deposit until May 13, 2015, well outside the 15 day period prescribed by section 38.

The landlord did not file her application within 15 days of receiving the tenant's forwarding address. The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award him the sum of \$1,400.00. The tenant is entitled to recover the \$50.00 filing fee for his application for a total claim of \$1,450.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord's application for a monetary award and for an order to retain the security deposit has been dismissed without leave to reapply. The tenant has been awarded double the amount of the deposit.

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: November 2, 2015

Residential Tenancy Branch

