Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution pursuant to the *Residential Tenancy Act* (the Act).

The landlord filed on June 01, 2015 pursuant to the Act for an Order to retain the tenant's security deposit in respect to damage to the unit, loss due to unpaid rent and recovery of their filing fee.

The tenant filed on May 20, 2015, and as amended, for the return of their security deposit and compensation pursuant to Section 38 of the Act.

Both parties attended the hearing and were given full opportunity to present relevant evidence and make relevant submissions. The parties acknowledged receiving the evidence of the other inclusive of document and digital evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

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

Background and Evidence

The tenancy began December 01, 2014 and was guided by a written tenancy agreement which, despite its identified date errors, repeated the term of the tenancy agreement as a *6 month term with a provision for renewal*. The landlord explained it was intended to state the term as renewable fixed-term for 6 months, while the tenant only conceded the stated year of 2014 to be an error, which should have been stated as a term to May 01, 2015. The parties agreed the tenancy agreement has no provision

for the tenant to vacate at the end of the term. During the hearing I made a preliminary finding the term was understood by both parties at the outset of the tenancy to be a *renewable term of not less than 6 months*.

At the outset of the tenancy the landlord collected a security deposit and a pet damage deposit in the sum amount of $750.00 which they retain in trust. The parties agreed the tenancy ended April 30, 2015, following the landlord receiving a letter from the tenant dated April 17, 2015 effectively notifying the landlord they were ending the tenancy at the end of April 2015.

The landlord did not conduct a *move in* or *move out* inspection in accordance with the Act despite the landlord providing evidence of the tenant's willingness to attend at the rental unit to do a move out inspection the last week of April, or at the landlord's convenience. The landlord claims they were not available to do an inspection. The parties agree the tenant sent the landlord their written forwarding address on May 25, 2015 and received by the landlord on or before May 30, 2015.

The tenant seeks double the return of their deposits, in the sum amount of $1500.00.

The landlord claims they were not provided adequate notice by the tenant so as to end the tenancy April 30, 2015, and alternatively, if I interpret the tenancy agreement to be a fixed term, that the landlord is owed rent for the month of May 2015 in the amount of $750.00 as a contractual obligation by the tenant to satisfy the rent to the end of the fixed term.

The landlord argues that at the end of the tenancy they identified damage to the unit.

The landlord claims the tenant damaged the stove exhaust pipe – replacing the pipe with a different type of pipe contrary to code. The tenant acknowledged the change, and the landlord provided a receipt for a new pipe in the amount of $35.60. The landlord and tenant effectively agreed the tenant damaged the stove door handle, for which the landlord claims $20.00 of their labour to repair the handle. The landlord claims $120.00 for carpet cleaning. The landlord did not provide a receipt for carpet cleaning. The parties agreed the tenant drilled 4 holes into an entry door, requiring repair, for which the landlord claims $40.00. The landlord claims the tenant damaged, or broke, the telephone box in the unit, which the tenant denies doing. The landlord testified the telephone box was left compromised and requires a technician to remedy the damage, while the tenant testified the box was solely handled by Telus and it was not damaged. The landlord was asked repeatedly to explain the nature of the damage to the telephone box and also provided a photograph of the telephone box; however, the landlord solely repeated that a technician would be required to address the matter

for the amount of $85.00 upon re-establishing telephone service to the unit. The parties agreed that the tenant chipped, or damaged 8 tiles in the unit, which the landlord claims requires $600.00 for its remedy. The landlord provided this as an estimate inclusive of travel time to the rental unit location and the replacement of the tiles.

Analysis

The parties may access resources and a copy of referenced publications at **www.bc.ca/landlordtenant.**

I have reviewed the submissions of the parties. On the preponderance of the document and digital submissions and the testimony of the parties, I find as follows.

It must be known that a tenant is not responsible for reasonable or normal wear and tear to the rental unit. The landlord is claiming the tenant is responsible for *damage* – or deterioration or a change resulting in an excess of wear and tear. While I may accept the tenant may have acted in good faith in respect to some of the landlord's claims, I must determine whether the result of the tenant's conduct left the rental unit in a state beyond the scope of reasonable wear and tear.

In this matter, I accept the parties' testimony the tenant altered the stove pipe in the unit and their use of the stove compromised the door handle of the stove. I further accept the parties' testimony, in agreement, respecting the holes left in the entry door by the tenant. As a result, I grant the landlord **$33.60** for the stove pipe, **$20.00** for repair to the stove door handle, and **$40.00** for damage to the entry door.

I further accept the parties' testimony that the tenant chipped, or damaged the tiles. Despite the lack of a receipt for the required work I accept the landlord's estimate of $450.00 for repairs and $150.00 for the contractor's travel time, given the location of the rental unit and that the landlord's claim is not extravagant. As a result I grant the landlord **$600.00** for the damaged tiles.

I find that the landlord has not provided sufficient evidence the tenant *damaged* the telephone box. As a result, **I dismiss** this portion of the landlord's claim.

In the absence of a receipt for the carpet cleaning **I dismiss** the landlord's claim for carpet cleaning in the amount of $120.00.

Despite the parties' controversy in respect to the term of the tenancy agreement I find that the tenant is obligated to compensate the landlord for the payable rent of **$750.00** for the month of May 2015. I find that if the term was for a fixed term of 6 months the tenant would be responsible for the entire term, subject only to the landlord duty to

mitigate their claim. Given the landlord had approximately 10 days to respond to the tenant's late notice, I find it reasonable the landlord did not have sufficient time to re-rent the unit for May 2015. Alternatively, I find that if the term of the tenancy was a *renewable term for not less than 6 months*, the tenant was obligated to provide the landlord with Notice to end the tenancy in accordance with **Section 45(1)** of the Act – effectively providing the landlord with notice to end the tenancy the day before the rent was due for April 2015.

The landlord is further entitled to recover their filing fee.

I find that **Section 24 and 36** of the Act state that if the landlord does not conduct condition inspections in accordance with the Act *the landlord's right to claim against the security or pet damage deposit is extinguished* – leaving the landlord solely an obligation to return to the tenant their deposits. It must be noted that this does not preclude or prevent the landlord from making an application for *damages* to the unit.

In this matter I find the landlord filed an application claiming against the tenant's deposits soon after receiving the tenant's forwarding address. However, as the landlord's right to make such a claim was *extinguished*, the landlord sole recourse was to return the deposits to the tenant in accordance with Section 38(1)(c), within the required 15 days after receiving the tenant's forwarding address; however, the landlord failed to do so. As a result, the tenant is entitled to compensation prescribed by **Section 38(6)** of the Act requiring the landlord to pay the tenant double the amount of their deposits in the sum of $1500.00. I find the tenant is entitled to this amount, which will offset from the awards made herein.

Calculation for Monetary Order

Landlord's award for unpaid rent	$750.00
Landlord's sum award for damages	$693.60
Landlord's filing fee	$50.00
Minus Tenant's award	*-$1500.00*
Total Monetary Award to tenant	**($6.40)**

Conclusion

The applications of both parties were, in relevant part, granted and their awards offset against the other.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$6.40**. 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: November 04, 2015

Residential Tenancy Branch