Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNSD, MND, FF
Tenant: MNSD, (O) 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 April 18, 2015 and thereafter amended their claim September 02, 2015 pursuant to the Act for an Order to retain the tenant's security deposit in respect to damage to the unit, a monetary order for loss due to damage and recover their filing fee.

The tenant filed on April 28, 2015, for the return of their security deposit and compensation pursuant to Section 38 of the Act, fractional rent for March 2015 rent, and to recover their filing fee.

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 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 August 07, 2014 and was guided by a written tenancy agreement for a furnished renal unit. The payable monthly rent was $850.00. At the outset of the

tenancy the landlord collected a security deposit in the amount of $425.00, which they retain in trust. The landlord and tenant performed a "walkthrough" at the beginning of the tenancy although the landlord did not complete a condition inspection report. The parties agreed the tenancy ended March 21, 2015 when the sewer main flooded a portion of the rental unit with

sewage rendering the unit unusable and requiring the tenant to vacate. The tenant and landlord effectively agreed to end the tenancy. On April 03, 2015 the tenant returned to collect their personal items left behind March 21, 2015 at which time the parties performed a "walkthrough" although the results of which were not recorded by the landlord . On the same date of April 03, 2015 the parties agree the tenant informed the landlord of their forwarding address in writing.

The parties agreed they performed a "walkthrough" at the end of the tenancy at the time the tenant retrieved their personal items on April 03, 2015. The landlord did not complete a condition inspection report as required by the Act; however, the tenant provided a video file depicting the parties' discussion of the condition of the rental unit in which the parties effectively agreed the unit was left reasonably clean with no discernable indication the rental unit was left damaged by the tenant at the end of the tenancy. The video depicts that at issue for the landlord was a missing light bulb; which, despite an effort from the tenant to replace it, purchased a light bulb which was unacceptable to the landlord. During the "walkthrough" with the tenant on April 03, 2015 The landlord provided a 1 page document titled *Repairs At End Of Tenancy* in which the tenant stated they did not cause any damage and in which the landlord stated they disagreed but did not specify damage to the landlord's property – and as a result the parties did not agree as to the administration of the security deposit.

Tenant's application

The tenant provided they sought the return of their security deposit under Section 38 of the Act, and compensation for loss of use of the rental unit to the end of March 2105. They testified they did not leave the rental unit damaged therefore their security deposit should be returned, however testified they agree to pay the landlord for a light bulb. The landlord and tenant agreed the landlord would compensate the tenant $150.00 for their loss of use of the unit in the month of March 2015.

Landlord's application

The landlord clarified their original claim of $800.00 for carpeted stairs *is withdrawn:* satisfied by their insurance provider.

The landlord sought compensation for a light bulb in the amount of $9.69 which the tenant did not dispute. The landlord further sought the replacement cost for an outdoor area carpet in the amount of $100.69, and for the original value of a double bed: frame and mattress – in the amount of $670.88.

The landlord claims the tenant refused to allow the plumber attending to the sewer mishap of March 21, 2015 to cross through his rental unit via their private entrance and through the kitchen area in order to access the plumbers' working area; and as a result the plumber crossed through the landlord's suite via the landlord's deck – which the landlord claims caused soiling to the landlord's outdoor area carpet. The landlord provided a large format photograph of the carpet - which carpet appeared intact, depicting an amount of shading including some lines and what appeared to be *outdoors* debris. The landlord claims the plumber's equipment soiled the

carpet. The landlord also provided a photograph of a comparable carpet for the amount of $89.99 representing the taxed sum of $100.69.

The landlord provided a witness, EL, whom testified under oath.

The witness testified that the tenant would not allow the plumber to cross the tenant's suite / kitchen area to attend to the work for 1 ½ *hours*, resulting in the plumber crossing the landlord's carpet area. The tenant responded they spoke with the plumber for approximately 1 ½ *minutes* before agreeing to the plumber crossing through their suite, but the plumber may have chosen otherwise. The tenant testified they had no concerns about the plumber crossing their area as their kitchen area was already compromised by the flood, and the landlord also stated the tenant had no reason to deny the plumber access via their private entrance. The tenant requested the plumber be called as their witness. The plumber was called with the aid of the conference bridge operator, and ultimately logged into the conference hearing. The plumber was neither aware of nor prepared for involvement in the hearing and could not recall the job of March 21, 2015 at the dispute address 8 months before and requested prompting. I determined the tenant's prospective witness was clearly not informed they would be a witness nor were they a willing witness. The witness required prompting and I declined to hear the witness as their testimony would be speculative at best and unreliable.

The landlord additionally claimed they had to dispose of a bed, mattress and pad, because over the course of several months following the sewer line flooding, the frame and mattress had absorbed sewage odour, and replaced it. The landlord argued the tenant's personal items had remained in the bedroom after March 21, 2015 and the tenant did not want the bedroom entered, so the "insurance furniture movers" could not remove the bed. Therefore, the landlord determined the tenant is responsible for replacing the bed. The landlord acknowledged it was available to them to move the bed after the tenant removed all their personal items April 03, 2015, but they did not. The landlord provided the original receipt for the claimed bed, dated August 2009, as well as a receipt for a new bed.

Analysis

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

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

During the course of the hearing the parties agreed to settle portions of their claims as follows, and I will so Order.

1).The landlord and tenant agreed the landlord will compensate the tenant **$150.00** for loss of use of the unit to the end of March 2015.

2).The tenant agreed to compensate the landlord **$9.69** for a light bulb.

It must be known 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* to the rental unit – or deterioration in an excess of normal or reasonable wear and tear. Further, it must also be known a landlord holds the tenant's deposit in trust for the duration of the tenancy. If at the end of a tenancy parties agree to the administration of the deposit or a landlord presents a valid claim against the deposit through arbitration the landlord may become entitled to retain a portion or all of the deposit. In the absence of the above, the tenant would be entitled to the return of their deposit. In this matter, the landlord filed an application to retain the tenant's security deposit on the 15th day after receiving the tenant's forwarding address, and it was explained to the parties that this would typically preclude the tenant from entitlement to double their deposit.

On reflection, 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 for damage is extinguished* – leaving the landlord solely the obligation to return to the tenant their deposit in it's entirety, however, retaining the right to make an application for any *damage* to the unit.

In this matter I find the landlord filed an application claiming against the tenant's deposit within 15 days after receiving the tenant's forwarding address. However, as the

landlord's right to make such a claim was *extinguished*, the landlord's sole recourse was to return the deposit to the tenant in accordance with **Section 38(1)(c)** - 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 deposit. I find the tenant is entitled to this amount, which will offset from the awards made herein.

In respect to the landlord's claim for damage it must be known the burden of proving claims of loss and damage rests on the claimant for such loss. In this matter, the landlord must establish, on a balance of probabilities that they suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, did the landlord take reasonable steps to mitigate or minimize the loss? **Section 7** of the Act states 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,

2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

I find the parties presented contrasting evidence in respect to the carpet claim. However, it is not sufficient for a claimant to simply provide their version of events in the face of the opposing party providing a different version - the landlord in this matter bore the added burden of proving their claim on a balance of probabilities. I find the landlord has not provided sufficient evidence in support of the claim the tenant is liable for the soiled area carpet on the landlord's deck. Regardless of the foregoing, I find the landlord's evidence the tenant had no reason to deny the plumber access through their already soiled area, and the tenant's evidence they had no concerns about the plumber crossing their area as it was already compromised by the flood lends credibility to the tenant's version of events. On balance of probabilities, *I prefer* the evidence of the tenant over that of the landlord that the tenant did not impeded the plumber from crossing through their suite. Therefore, **I dismiss** this portion of the landlord's claim seeking $100.79.

In respect to the landlord's claim for a new bed, I find the landlord may have satisfied that the bed required replacement, and verified its original, value. However, the landlord failed to neither prove the damage or loss occurred solely because of the actions or neglect of the tenant in violation of the *Act* or agreement, nor that they followed Section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage. I find it was available to the landlord to move the bed and mattress following April 03, 2015 - after the tenant removed all their items and returned the keys – and before the claimed months of odor absorption purportedly compromised the bed. The landlord further failed to mitigate their claim for the bed by factoring depreciation since its purchase in 2009. As a result of the above, **I dismiss** this portion of the landlord's claim.

Calculation for Monetary Order

Tenant security deposit pursuant to Sec. 38(6)of the Act	850.00
Tenant compensation for loss of use for March 2015	150.00
Minus landlord's compensation for 1 light bulb	*-9.69*
total Monetary Order to tenant	**$ 990.31**

As both parties were, in part, successful in their claims they are equally entitled to recover their filing fee, which cancel in calculation, therefore not included.

Conclusion

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

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **$990.31**. 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 16, 2015

Residential Tenancy Branch