Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN MND MNSD FF – Landlords' Application
MNDC MNSD - Tenant's Application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed their application on February 2, 2016 seeking an Order of Possession and a Monetary Order for: damage to the unit sight or property; money owed or compensation for damage or loss under the *Act,* Regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant.

The Tenant filed his application on November 30, 2015 seeking a Monetary Order for the return of double his security and pet deposits and/or money owed or compensation for damage or loss under the *Act,* Regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by both Landlords and the Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On November 30 the Tenant submitted evidence to the Residential Tenancy Branch (RTB), in support of his own application which consisted of the Canada Post receipts as proof of service of his Application and hearing documents to the Landlords. These receipts were not served upon the Landlords. The Landlords appeared at the hearing and confirmed receipt of the Tenant's application and hearing documents.

On February 19, 2016 the Landlords submitted 40 pages of evidence to the RTB. The Landlords affirmed that they had not served the Tenant with copies of the same documents in the same format they had served them to the RTB. The Landlords testified they served their evidence to the Tenant as follows: (1) with smaller and more pictures printed on every page; (2) some of the documents such as the tenancy agreement were not served to the Tenant as they were to the RTB; and (3) the evidence was served upon the Tenant a different order than what was provided to the Tenant. The Tenant acknowledged receipt of only 4 pages of documents from the Landlords.

Rule of Procedure 3.7 provides, in part, to ensure a fair, efficient and effective process, an **identical package** of documents and photographs, which are identified in the same manner and are placed in the same order, must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office. To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible [my emphasis added by bold text].

I find the Landlords' evidence submissions to the RTB and to the Tenant did not meet the requirements of the Rules of Procedure 3.3 and 3.7. Furthermore, the Landlords provided testimony they had filed a previous application for Dispute Resolution on June 11, 2015 regarding the same matters and attended a hearing on November 18, 2015 when they withdrew their application. The Decision for the previous hearing was read into evidence and included the following:

> *Leave is not an extension of any applicable limitation periods.*
>
> [Reproduced as written]

Based on the above, I declined to consider all of the Landlords' evidence submission, pursuant to Rule of Procedure 3.7. I did consider the move in and move out condition inspection report forms submitted by the Landlords as the Tenant confirmed receipt of the exact same documents. I was not satisfied the Tenant was served with copies of the same remaining documents and photographs that were submitted to the RTB by the Landlords. Therefore, the remaining evidence received from the Landlords will not be considered as evidence for this proceeding. I did however consider the Landlords' oral submissions regarding that evidence.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.3 stipulates that evidence supporting a cross-application must be submitted at the same time as the application is submitted or within three business days of submitting an online Application for Dispute Resolution; and be served on the other party at the same time as the hearing package for the cross-application is served.

Rule of Procedure 3.10 provides for digital evidence which includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Rule of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must

ensure documents and digital evidence that are in intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

On February 19, 2016, the Tenant submitted a C.D. of digital evidence to the RTB. That C.D. included electronic photographs and some documents in pdf format. The Landlords confirmed receipt of the Tenants C.D. and confirmed they had reviewed the contents. The Landlords argued they had only received that C.D. on February 22, 2016 and argued they did not have time to submit a written response to that evidence.

The Landlords' evidence was not submitted or served with their cross application as required by Rule of Procedure 3.3. The Landlords did not serve their evidence until 10 days after they filed their application which I find restricted the Tenant's ability to submit his respondent's evidence. That being said, the Landlords received the Tenant's evidence 8 days prior to the hearing.

Based on the above, I find the Tenant submitted his electronic photographs in accordance with the Rules of Procedure and those photographs will be considered as evidence for this proceeding. The two pdf documents which were included on the CD do not meet the requirements of digital evidence as set out in the Rules of Procedure and will not be considered as evidence for this proceeding.

Each person was provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to monetary compensation for damage or loss?
2. Has the Tenant proven entitlement to the return of double his security and pet deposits?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on May 15, 2014 and was set to expire on May 31, 2015. Rent of $1,250.00 was payable on the first of each month. On May 15, 2014 the Tenant paid $625.00 as the security deposit and $200.00 as the pet deposit.

The rental unit was described as being a one level, 1,100.00 square foot, single detached house. The house was built in the early 1970's and purchased by the Landlords in the year 2000.

The parties attended a move in inspection and signed the condition form on May 16, 2014. The parties attended the move out inspection on June 1, 2015 and signed the condition inspection report form.

On May 1, 2015 the Tenant served the Landlords his notice to end the tenancy effective May 31, 2015, the end of the fixed term tenancy. The Tenant provided his forwarding address to the Landlords on June 1, 2015.

The Landlords testified when the Tenant moved out of the rental unit he left the unit requiring repairs, painting, and cleaning. As a result they now seek $2,525.00 in monetary compensation as follows:

1) $150.00 to repair a broken window in one of the bedrooms. The Landlords asserted the window broke during the tenancy and they reminded the Tenant he was required to repair the window before the end of his tenancy. The window has not yet been replaced or repaired. The Landlords stated the amount claimed was based on their construction industry knowledge.

2) $1,500.00 for painting the entire rental unit based on an estimate they had acquired. The Landlords argued the Tenants had painted the entire rental unit with dark paint colors and did not return the unit to its original color. The Landlords stated the Tenant did not have their permission to paint the unit dark colors.

   The Landlords argued the Tenant had signed the tenancy agreement and addendum which included the following clause which they read into evidence: "*Any interior or exterior changes need to be approved by landlord*"

   The Landlords testified they had not yet had the rental unit re-paint. Upon further clarification they stated they had entered into an agreement with their new tenant that he would take care of the repairs and cleaning.

3) $500.00 to replace all of the electrical outlets, cover plates, and pot light covers. The Landlords submitted the Tenants had painted all of the outlets, cover plates, and pot light covers black and they cannot be returned to their original color and must be replaced. The Landlords stated the amount claimed was based on an estimate to have an electrician do the repairs. They confirmed the repairs have not yet been completed and their new tenant agreed to conduct the repairs.

4) $20.00 to replace the weather stripping on the laundry room door which appeared to be scratched and/or chewed. The weather stripping has not yet been replaced and the amount claimed was based on the Landlords' construction experience.

5) $250.00 for general cleaning costs. The Landlords stated it took the two of them six or seven hours to clean the rental unit on June 1, 2015.

6) $105.00 for professional carpet cleaning which was completed on June 2, 2015. A copy of the receipt was submitted into evidence and a picture of that receipt was served to the Tenant.

The Tenant disputed all items being claimed by the Landlords. He argued the rental unit was dirty and damaged at the start of his tenancy and the Landlords gave him possession early and requested that he clean it and repaint it. He noted the move in inspection was not completed until after they had cleaned up and painted the rental unit.

The Tenant confirmed the bedroom window broke during their tenancy when they simply open and closed it. He argued the window was original from 1970 and was brittle which is why it broke. The Tenant asserted he reported the broken window to the Landlords and they simply refused to repair it so he taped it up as best he could. He stated they ended their tenancy as soon as the fixed term ended because these Landlords refused to repair or maintain the rental unit.

The Tenant confirmed they painted the rental unit walls with dark colors as are shown in his photographs. He asserted he had the Landlords' permission to paint the unit and noted that the Landlords listed the paint on the move in inspection report. He submitted the unit was painted in a professional manner and they even had to use special primer before painting because the walls were yellow from nicotine. He argued the unit was not painted just prior to his tenancy and stated the unit was filthy mess when they took possession.

The Tenant acknowledged that they painted the outlet and switch cover plates and the pot light covers black. He argued they too were stained yellow from the nicotine and could not be cleaned so they painted them. He pointed to his photographs which clearly show the electrical outlets were not painted as submitted by the Landlords. The Tenant disputed the $500.00 claimed and argued cover plates cost only 50 cents each and could not possibly add up to $500.00.

The Tenant testified he had a dog which was a four year old Labrador. He argued his dog did not damage the weather stripping on the shared laundry room door. Rather the weather stripping was old and brittle and was damaged prior to their tenancy. He argued the move in condition report was not a detailed report and the weather stripping was so minor it was not listed on the report.

The Tenant pointed to his photographs as evidence of the condition he left the rental unit in at the end of his tenancy. He confirmed he did not submit pictures of the inside of the oven and drawers and argued that he had cleaned those areas. The Tenant asserted when he attended the rental unit to conduct his move out inspection the new tenant had already moved in some of his possessions. He argued the articles shown in

the Landlords' evidence were not his possessions. Therefore, he should not have to pay for cleaning.

The Tenant confirmed he did not have the carpets cleaned at the end of his tenancy. He stated he had made sure the carpet was vacuumed well. The Tenant argued he had complained to the Landlords his entire tenancy about how bad the carpet smelled and the Landlords finally gave him a roll of replacement carpet and told him to install it. He argued he did not need to have the carpet cleaned at the end of his tenancy because it was in much better shape than when he took possession of the rental unit.

The Landlords asserted they were not aware of the broken window until the move out inspection. They confirmed the carpets were newer and they had given the Tenant a roll of carpet to install. The Landlords stated there has never been smoking in the rental unit and the laundry room door was only 5 years old. The Landlords confirmed the new tenant was given access to the rental unit before the inspection and argued he had only moved in his bed and no other possessions.

Analysis

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 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.
>
> 7(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.

Section 67 of the Residential Tenancy *Act* states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Landlords' application

The Landlords had regained possession of the rental unit on or before May 31, 2015, prior to them filing their application. Therefore, I find the Landlords' request for an Order of Possession to be meritless and it is dismissed, without leave to reapply.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.*

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.

Policy Guide 40 provides the normal useful life of a window to be 15 years. In this case the window which broke during this tenancy was original from 1970. That window was 45 years old which far exceeded its normal useful life. Based on the forgoing, and in consideration of the Tenant's submission that the window broke when the Tenant was simply opening and/or closing it, I find the window broke due to age and normal wear and tear. Therefore, I find the Tenant is not responsible to pay to have the window repaired. Rather, I find the Landlords were required to repair the window in accordance with section 32 of the *Act.* Accordingly, the Landlord's claim of $150.00 is dismissed, without leave to reapply.

I favored the Tenant's evidence regarding the terms of the agreement for him to paint the rental unit at the beginning of the tenancy over the evidence of the Landlords. I favored the Tenant's evidence because it was forthright, consistent, and credible. The Tenant readily admitted to painting the rental unit with colored paint and painting the switch covers, outlet covers, and pot light covers black; which I find lends credibility to all of the Tenant's submissions.

The Landlords' evidence was contradictory as they argued they did not agree the Tenant could paint the rental unit with colored paint and the Landlords clearly wrote on the move in inspection report that the walls were painted and noted it was with colored paint. Had they agreed the Tenant would repaint the unit at the end of the tenancy it is reasonable to conclude the Landlords would have put that agreement in writing or at the very least they would have written such an agreement on the move in condition report form. The Landlords did neither.

From their own submissions, the Landlords established that their pattern of dealing with the condition of the rental unit was by entering into cleaning and repair agreements with each of their subsequent tenants. The undisputed evidence clearly supported such a pattern with this Tenant and the tenant who occupied the rental unit after this Tenant.

Therefore, I conclude the Landlords entered into a contract for service with the Tenant to clean and paint the rental unit, a contract which is not covered by the *Residential Tenancy Act,* (the *Act*).

Based on the above, and upon review of the move in condition inspection report form, I accept the move in report form was completed several days after the Tenant was first given possession of the rental unit and after he had finished his contract for service; as the unit had been cleaned and painted when the report was completed. Accordingly, I find the Landlords submitted insufficient evidence to prove the Tenant breached the *Act* when he painted the rental unit with dark colors or when he painted the electrical covers, light covers; and pot light covers. Accordingly, the Landlords' claims for painting of $1,500.00 and $500.00 are dismissed without leave to reapply.

In absence of documentary evidence of the actual age of the laundry room door weather stripping, I find the Landlords submitted insufficient evidence to prove the Tenant was responsible for the replacement cost. Accordingly, the claim of $20.0 for weather stripping is dismissed, without leave to reapply.

The undisputed evidence was the Landlords scheduled the Tenant's move out inspection to be completed after the subsequent tenant had already been given possession of the rental unit and after the subsequent tenant had begun to move his possession into the rental unit. Therefore, I find the Landlords submitted insufficient evidence they suffered a loss for costs or time incurred cleaning the rental unit. Accordingly, the claim for $250.00 cleaning costs is dismissed, without leave to reapply.

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

Policy Guideline 1 provides the tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises. I find this policy is applicable to the matters before me.

It was undisputed the Tenant had a dog and did not have the carpets cleaned at the end of the tenancy, pursuant to section 37 of the *Act*. Therefore, I find the Landlords submitted sufficient evidence for carpet cleaning costs and I award them **$105.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have been only minimally successful with their application; therefore, I award partial recovery of the filing fee in the amount of **$15.00**, pursuant to section 72(1) of the Act.

Tenant's application

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

As stated above, this tenancy ended May 31, 2015, and the Landlord received the Tenant's forwarding address on June 1, 2015. Therefore, the Landlords were required to return the Tenant's security deposit of $625.00 and pet deposit of $200.00 in full or file their application no later than June 16, 2015.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

There was evidence the Landlords filed their initial application on June 11, 2015 and then withdrew that application on November 18, 2015. When the Landlords withdrew their application they were not granted an extension of any applicable limitation periods. Therefore, I find the Landlords did not file their application to retain the deposits within the required timeframes, pursuant to section 62 (2) of the *Act.*

As of this hearing on March 1, 2016, the Landlords remained in possession of the Tenant's security deposit of $625.00 and pet deposit of $200.00. Therefore, I find the Landlords have failed to comply with Section 38(1) of the *Act* and the Landlords are now subject to Section 38(6) of the *Act* which states: if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $625.00 security and $200.00 pet deposits since May 15, 2014.

Based on the above, I find the Tenant has succeeded in proving the merits of his application and I award him double the security (2 x $625.00) and double his pet deposit (2 x $200.00) for the total amount of **$1,650.00.**

Monetary Order – These applications meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlords' monetary award ($105.00 + $15.00)	$ 120.00
LESS: Tenant's monetary award	-1,650.00
Offset amount due to the Tenant	**($1,530.00)**

The Landlords are hereby ordered to pay the offset amount of $1,530.00 to the Tenant forthwith.

In the event the Landlords do not comply with my order the Tenant has been issued a Monetary Order for **$1,530.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Landlords were partially successful with their application and were awarded compensation in the amount of $120.00. The Tenant was successful with their application and was awarded $1,650.00. The monetary awards were offset against each other and the Tenant was issued a Monetary Order in the amount of **$1,530.00**.

This decision is final, legally binding, and 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: March 04, 2016

Residential Tenancy Branch