



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNR, FF
Tenant: MNSD, 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 their application August 22, 2015 for an Order to recover unpaid rent and retain the tenant's security deposit in satisfaction of their claim, and to recover their filing fee of \$50.00.

The tenant filed on January 21, 2016, for the return of their security deposit and compensation for loss, and to recover their filing fee \$100.00.

Both parties attended the hearing and were given opportunity to present *relevant* evidence and make *relevant* submissions. The parties acknowledged receiving the evidence of the other inclusive of document, photograph 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 parties agreed the tenancy began December 28, 2014 and has since ended. The tenancy was guided by a written tenancy agreement of which I do not have benefit of a copy. The parties testified the tenant was not provided a copy and the landlord has not submitted a copy. Regardless, the agreed payable monthly rent under the written agreement was \$1350.00 payable on the 1st of each month, and the payable amount

included cable and internet service to the rental unit. At the outset of the tenancy the landlord collected a security deposit in the amount of \$675.00, which they retain in trust. The parties agreed that at the start and end of the tenancy they did not perform mutual move-in and move-out inspections as required by the Act. The landlord testified they did not complete condition inspection reports.

The parties agreed the tenancy ended August 15, 2015 subsequent to the tenant providing the landlord with an e-mail on July 12, 2015 notifying the landlord they were vacating the following month. The landlord accepted the tenant's notice and the tenant vacated in accordance with it. At the end of the tenancy the parties did not agree as to the administration of the security deposit and the landlord subsequently filed to retain it.

Landlord's application

The parties agreed the tenant did not pay any rent for August 2015. The landlord sought unpaid rent representing one half of the monthly payable amount for solely the first half of August 2015: \$675.00.

Tenant's application

The tenant sought the return of their security deposit and compensation of double the amount pursuant to Section 38 of the Act on the basis the landlord had not applied to retain it. The hearing preliminarily addressed this portion of the tenant's application in which I found the landlord had stated in their application they sought retention of the security deposit in satisfaction of the unpaid rent and that I was satisfied the landlord had provided sufficient indication they were applying to retain the deposit.

The tenant provided they sought compensation of \$1450.00 for a 'queen' mattress, box spring, sheet and bed pad which the tenant testified they purchased in April 2011 and which they determined to discard before they vacated. The tenant determined the items were not salvageable consequent to their exposure to mould. The tenant provided the purchase invoice in the amount of \$1450.40 in support of the claim. The tenant's evidence indicates the item is 4 years old indicating the tenant has not mitigated or minimized their claim in respect to depreciation.

The parties agreed that in May 2015 the tenant reported to the landlord that in April 2015 they had noted a "waterfall" sound from the right bedroom. The landlord investigated the concern of the sound but found no inappropriate cause for it, or related evidence of water ingress. The tenant testified they did not know of the source of the sound and the landlord testified that there are water pipes that run in some walls which may account for the sound of flowing water.

2 months later, on July 01, 2015, the tenant came to their conclusion that as a consequence of the *waterfall sound* heard previously, the bedroom lower wall at the mattress's end had incurred ingress of water and caused water and mould damage. The tenant testified their mattress had absorbed the water, as had the carpeting below, as well as surrounding areas, and that moisture was contributing to mould growth nearby. The tenant testified the amount of water to have been 5 gallons. On July 04, 2015 they notified the landlord of the water ingress. The tenant testified that before contacting the landlord they had moved items out of the bedroom and re-arranged the home as to sleeping arrangements and had already determined to vacate the rental unit due to ongoing issues. The landlord viewed the damage on July 04, 2015, and again the following day with the builder of the home.

The landlord provided a letter from the builder dated February 02, 2016 in which they recounted their assessment of the water ingress issue viewed on July 05, 2015. The builder determined that in their experienced capacity as builders for nearly 40 years they found no building or mechanical failure to explain the presence of water. The landlord testified and provided photographic evidence they viewed the opened wall, and the builder and a subsequent plumbing tradesperson found it "completely dry", "bone dry". The builder determined any water problem or resulting mould issue had to have emanated from inside the unit. The builder stated it was further possible that the tenant's bed and box spring against the wall could also create an environment for mould.

The landlord provided a narrative from the plumber contractor of the house whom determined that there were no plumbing related issues and that in their opinion the, *"water damage was the result of a spill or some other man made accident."* - as written

The landlord additionally provided a narrative from their drywall contractor, in which the drywall contractor stated that on their inspection in July 2015 of the bedroom and upstairs above the bedroom, and the adjacent areas and under the carpet - they could not determine that any water had been behind the wall in the bedroom. They stated, *"there was no sign of water, water damage or mould anywhere else other than the surface of the drywall, in the bedroom behind the bed"*. – as written

The landlord argued that by their conduct the tenant somehow had caused the water and mould problem, and that it explains why the tenant did not immediately report the problem to the landlord. The tenant alternatively argued the landlord somehow caused water to cascade during their use of laundry facilities upstairs, where it could have pooled by the bed end - coming into contact with the carpeting and bed, contributing to a surrounding mould-friendly environment.

The tenant provided testimony and photograph evidence the unit's range hood did not exhaust to the outside and that it was a concern brought to the landlord's attention before entering into an agreement for the unit in November 2014. The landlord had agreed to install such an exhaust system and the parties agreed the landlord did not. The landlord testified they installed a vent hood unit with a charcoal filter which solely recirculated the air and filtered odour. The tenant testified that the lack of an exhaust to the outside compromised the air quality of the unit.

The parties agreed the landlord had use of an upstairs portion of the house. The parties agreed that on one occasion the landlord caused a quantum of electricity consumption in their absence from the unit. The landlord testified that to their thinking the inclusion of cable service in the payable rent was as sufficient offset for the landlord's consuming electricity when visiting the residential property. The tenant testified they were not clear on the landlord's understanding of the agreement or the landlord's thinking respecting the cable service or electricity as they lacked a copy of the tenancy agreement to corroborate what was agreed.

The tenant provided testimony and document evidence that during the tenancy they experienced a modicum, however unacceptable unannounced intrusions to their quiet enjoyment by the landlord and trades people, so as to cause them concern for their privacy and security of their children. The tenant testified that on more than one occasion when the landlord was upstairs their presence was unreasonably loud and discernable due to a lack of sound proofing in the home. The tenant provided they could hear, *"every step above our heads, every cough & when you use water it's like a waterfall in the walls, when you have company and are all talking I can't hear myself it gets so loud from above"* – as provided.

In summary the tenant argued that during the tenancy they experienced a lack of quiet enjoyment due to a number of factors and the landlord's conduct; and, in addition due to the landlord's conduct they lost a bed. The landlord argued the tenant likely caused the conditions leading to their loss. Additionally, the landlord argued they aptly responded to the tenant's concerns and requests and in the end the tenant did not abide by their agreement respecting rent.

Analysis

The parties may access referenced publications at: www.bc.ca/landlordtenant.

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

In respect to the landlord's application I find the landlord did not comply with their obligations pursuant to **Section 24 or 36** of the Act to conduct and record mutual condition inspections and therefore in contravention of either of these sections lost their right to claim against the security deposit *for damage to the rental unit*. None the less, the landlord retains the right to claim against the security deposit for any monies owing *for other than damage to the unit*. in this case, unpaid rent. **Section 26** of the Act, in relevant part, states;

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant failed to pay rent for the first half of August 2015. As a result, the landlord is owed the payable rent in the amount of **\$675.00**. The landlord is further entitled to recover their full filing fee in the amount of \$50.00.

In respect to the tenant's application for loss of their mattress it must be known the burden of proving claims of loss rest on the claimant for such loss. In this matter, the tenant must establish, on a balance of probabilities that they suffered a loss due to the landlord's neglect, or their failure to comply with the Act. And, if so established, did the tenant take reasonable steps to mitigate or minimize their 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, **Section 7** prescribed the tenant must satisfy *each* component of the test below:

1. Proof the loss exists,

2. Proof the loss occurred *solely because of the actions or neglect of the Respondent* (landlord) in violation of the *Act* or tenancy agreement
3. Verification of the actual amount required to compensate for the claimed loss
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The parties presented contrasting evidence in respect to the mattress loss claim. I find neither party conclusively proved the other party caused the tenant's loss. 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. A claimant bears the added burden of proving their claim on a balance of probabilities.

I have reflected on the overall evidence advanced in support of the tenant's version of events and upon the overall evidence in support of the landlord's version. I find the tenant surmised that either an exterior pooling of water seeped inward to the mattress and the floor under it, or the landlord caused water to flow from upstairs. I find the landlord provided evidence the tenant's claims were investigated by 3 construction trades people whom were experienced and knowledgeable of the house. The landlord's evidence aptly explained the sound of flowing water ("waterfall sound") in the wall as normal, and each of the trades people determined water could not have come from above, or the exterior. I have weighed the evidence, and on balance of probabilities, I find *I prefer* the overall evidence of the landlord. I find their evidence makes sense and the tenant's evidence insufficient to prove their loss occurred *solely because of the actions or neglect of the landlord*. As a result, **I dismiss** the portion of the tenant's claim for loss of a mattress, box spring, sheet and bed pad.

I have carefully considered the tenant's claim for loss they state as "unlivable conditions". I accept this includes an unresolved kitchen exhaust, unannounced intrusions to their privacy and security, upstairs noise by the landlord, and an increase to the tenant's electrical usage caused by the landlord. I also accept the tenant was not given a copy of the tenancy agreement to which they were legally entitled. In respect to all the above, I find the tenant is entitled to compensation for what is better termed a loss of quiet enjoyment – for which I award the tenant the amount of **\$750.00**.

I find the landlord made application to retain the security deposit in accordance with the *Act* therefore the tenant is not entitled to any doubling provision afforded by the *Act*.

As the tenant has been partially successful in their application I grant the tenant partial recovery of their filing fee in the amount of \$50.00.

Calculation for Monetary Order

The parties' filing fee entitlements mathematically cancel. The security deposit will be offset in the awards herein.

security deposit held by landlord	\$675.00
<i>retention of deposit by landlord for unpaid rent</i>	-\$675.00
tenant's award for loss	\$750.00
Monetary Order to tenant	\$750.00

Conclusion

I Order the landlord may retain the security deposit of \$675.00 in full satisfaction of their claim.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$750.00**. 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: March 07, 2016

Residential Tenancy Branch