Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

On October 1, 2015 the landlord applied requesting compensation for loss of rent revenue, damage to the rental unit, unpaid utilities, to rent in the security and pet deposits and to recover the filing fee cost.

On October 7, 2015 the tenant applied requesting return of the deposits and compensation for damage or loss under the Act and to recover the filing fee cost.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for unpaid utilities?

Is the landlord entitled to compensation for the loss of October 2015 rent revenue?

May the landlord retain the deposits or is the tenant entitled to return of the deposits?

Is the tenant entitled to compensation for the loss of quiet enjoyment?

Background and Evidence

The one year, fixed-term tenancy commenced on May 1, 2015. The tenant paid a security and pet deposit in the sum of $500.00 each. Rent was $1,000.00 per month

due on the first day of each month. The rental unit is on the lower floor of a home; the upper floor has another rental suite.

The landlord submitted a copy of the agreement which was signed by the landlord on May 1, 2015 and signed by the tenant on May 3, 2015. The landlord said the tenant had signed the agreement on May 1, 2015, not on the third day of the month.

The parties disputed whether there was a move-in condition inspection completed. The landlord supplied a copy of an inspection report completed on May 1, 2015. That report was signed by the landlord only. The landlord said that the tenant did not arrive on May 1, 2015 as he said he would. The tenant then told the landlord he would meet with her on May 3, 2015, but he did not.

The tenant said a date was not set for a move-in inspection. The tenant was not asked, when at the unit on May 3, 2015, to sign an inspection report.

The tenant stated he returned from being away on May 3, 2015. He met the landlord at the rental unit, signed the tenancy agreement and was not asked to complete an inspection with the landlord. The tenant said he first saw the inspection report at the end of the tenancy. The landlord said that the tenant from the upper unit gave the tenant the keys and a copy of the inspection report on May 6, 2015.

The parties agreed that the tenancy ended effective September 30, 2015 as the result of an undisputed one month Notice to end tenancy for cause that was served to the tenant.

The landlord told the tenant to meet with her at 1 p.m. on September 30, 2015 to complete the move-out condition inspection. The tenant arrived at the unit but he refused to sign the inspection report.

The landlord has made the following claim:

Loss of October 2015 rent revenue	$1,000.00
Lock replacement	175.28
Carpeting	828.82
Utilities	79.41
Cleaning	160.00
TOTAL	$2,243.51

The landlord has claimed the loss of October 2015 rent revenue as the tenant changed the locks to the rental unit and blocked attempts to show the unit to potential renters. There was no dispute that on August 10, 2015 the tenant changed the locks to the rental unit door. He did not have an order allowing him to do so. The tenant said the landlord had put dog feces in his dogs' food and water bowl; the tenant found that disturbing, so he changed the locks.

The landlord submitted a copy of an August 26, 2015 notice issued to the tenant that she would be having a locksmith replace the lock on August 27, 2015. The fee would be taken from the deposit. The locks were not changed. The landlord said the police told her if she changed the locks the tenant would likely change the locks again, so the landlord had left the lock in place. On October 1, 2015 the landlord had the lock changed. An invoice in the sum of $175.28 was supplied as evidence.

On August 27, 2015 the tenant issued a note to the landlord; a copy was submitted as evidence. The tenant told the landlord she did not have a right to enter as notice had been given once previously that month.

The landlord had listed the rental unit on a local web site and attempted to show the unit to two people on August 27, 2015. The landlord sent the tenant a message asking if the landlord would be able to enter the unit. The landlord submitted a copy of written notice given to the tenant. The tenant let the two potential renters into the home but would not allow the landlord show the unit. The landlord said the tenant said negative things about her while showing the unit to the potential renters.

The landlord submitted a copy of an ad placed on the internet and a social media site, by the tenant. The ad provided the landlords' full name and advertised the unit in a very negative light. The tenant confirmed he place this ad, which shows, at the time of printing, 76 views. The tenant said he removed the ad after several days.

The landlord said she was unable to show the unit further, due to the lack of cooperation by the tenant and, as a result lost October 2015 rent revenue. The landlord was able to locate new tenants effective November 1, 2015.

The landlord supplied a photograph of the carpet inside the door of the rental unit. The tenant cut away an area form the carpet. The landlord thinks the tenants' dog damaged the carpet. The carpet was five years old. The landlord has claimed the cost of replacing the carpet. The replacement estimate supplied as evidence indicates a cost of $51.48 for removal and $163.80 for installation of carpet. The cost of two types of flooring was provided; one at $490.00 and the other in the cost of $109.20. The estimate included reference to the cost of "lino tear out, install new lino."

There was no dispute that the tenant had hired a cleaning company who sent in two cleaners. The tenant had authorized the equivalent of three hours of cleaning. The landlord spoke to the cleaning company to enquire about costs. The landlord then completed cleaning the unit herself. The fridge, stove and walls needed cleaning. The company hired by the tenant told the landlord that they were not hired for time sufficient to fully clean the unit. The tenant said the unit looked better when he moved out that when he had moved in. The landlord has claimed the cost of her own time.

Photographs of the carpet that had been cut, the inside of the oven with some marks on the bottom, a dirty fridge shelf, tub and furnace filter was provided as evidence.

The tenant was at the unit for the move-out inspection but the landlord became belligerent so he left. The landlord followed him to his truck, yelling and screaming. The tenant said he should not be responsible for October, 2015 rent as new tenants moved into the unit immediately. He saw a truck in the driveway and a moving van immediately after he vacated. When he would drive by the unit he would see vehicles parked in the spot he had used.

The tenant did change the locks as a result of the landlord putting dog feces in the dogs' water bowl and due to the landlords' constant presence at the rental unit. The tenant left the lock and gave the landlord the keys for the lock. The tenant submits that when he left the keys he was told to get off of the property.

The tenant said the carpet was frayed at the edges and his vacumned cleaner caught the strands. A picture of the vacuum, with strands caught in the power head, was submitted as evidence. The tenant said he told the landlord about the carpet problem within one week of moving in. The landlord said she would look at it, but did not.

The tenant agreed to the cost of utilities claimed by the landlord.

The tenant then made submission in relation to the following claim:

- $1,000.00 - return of pet and security deposits; and
- $1,250.00 - loss of quiet enjoyment ($250.00/month X 5 months)

There was no dispute that the tenant gave the landlord his forwarding address on September 30, 2015. The landlord applied claiming against the deposits within fifteen days.

The tenant provided a written summary of the dates and some times that the landlord contacted him by text. At first the tenant thought the contact was reasonable, but the contact became excessive. Between May 7, 2015 and August 18, 2015 there were 22 visits to the property by the landlord.

The first five visits, up to May 10, 2015 seemed appropriate. At times the landlord would come to the unit and drink with the tenants upstairs. On May 11, 2015 the landlord was at the unit on six occasions, near the entrance to the tenants' unit. The tenant found this intrusive.

On August 10, 2015, after a number of phones calls by the landlord, banging on the unit door and screaming and yelling; the tenant found feces in his dogs' dishes and on the front step. The tenant provided a copy of a text message sent to the landlord regarding the clean-up of dog feces and a picture of the water bowl, which was photocopied and unclear.

When asked if the tenant ever told the landlord not to come to his unit or contact him, the tenant responded that he did, in June or July, 2015. The tenant said it was an uncomfortable environment. On June 2, 2015 the landlord text the tenant twice in the evening, asking if he was home. On September 27, 2015 the landlord called the tenants cell phone multiple times.

The landlord responded that she never entered the tenants unit without proper notice. The landlord was at the rental unit on multiple occasions during June 2015 as the tenants in the upper unit had been evicted and she had to prepare the unit for new occupants. The landlord stated that she never felt her contact with the tenant was harassing in nature. She did repeatedly text him on the last day of the tenancy as the tenant was not on time for the inspection.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act and proof that the party took all reasonable measures to mitigate their loss.

In relation to the landlords' claim for loss of October 2015 rent revenue, the landlord said that the unit could not be shown as the tenant had changed the locks and would not allow her into the unit. There was no evidence before me that the landlord took any steps to change the locks; other than a note issued to the tenant, indicating the locks would be changed on August 27, 2015. That did not occur. The landlord may have believed the tenant would not allow a new lock to remain on the door, but the landlord did not make any attempt to enforce her right to change the lock so access could be made to the unit. If the landlord had attempted to change the locks the loss claimed might have been avoided.

Once the tenant refused entry to the rental unit by the landlord I find that the landlord ceased making efforts to rent the unit until such time as the tenant vacated. There was no evidence before me of any other efforts made by the landlord, such as changing the locks so entry could be gained, written notice to the tenant that showings would occur or use of an agent to show the unit if the landlord believed the tenant would not cooperate.

I find that the tenant thwarted the landlord by placing a negative ad about the rental unit on a local web site. The date of this ad is not known, but I find it reflects the tenants' intent to interfere with the landlords' rights. This ad, combined with the tenants' refusal to allow the landlord to enter the unit to show it to prospective tenants on one occasion, resulted in a breach of the landlord's lawful rights.

Residential Tenancy Branch (RTB) policy suggests that a claim for loss of rent revenue should put the landlord in the same position as if the tenant had not breached the

tenancy agreement. The fixed term tenancy was to end on May 1, 2016. The tenant accepted the one month Notice to end tenancy for cause that was effective on September 30, 2015. Therefore, I find that the tenancy ended based on conclusive presumption, when the tenant did not dispute the Notice ending tenancy.

I have rejected the tenants' submission that the unit was rented as soon as he vacated; the tenant brought forward no corroborating evidence that new tenants had moved into the unit. There was no evidence that the unit was showed to more than two individuals in August 2015 or that those individuals rented the unit.

I have also considered section 7 of the Act, which provides:

Section 7 of the Act provides:

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.*

RTB policy suggests this means that the claimants must show reasonable steps were taken to keep the loss claimed as low as reasonably possible. Policy suggests that the applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. When steps are not taken to minimize the loss, an arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

I find, on the a balance of probabilities, that the landlord has failed to prove that all reasonable efforts were made in an attempt to mitigate the loss of October 2015 rent revenue. There was only one effort made to show the unit and no evidence that the landlord took any other steps to rent the unit effective October 1, 2015. However, I find that the decision to withdrawn from showing the unit was based, at least in part, on the behaviour of the tenant, who was less than cooperative.

Therefore, pursuant to section 67 of the Act, I find that the tenants' actions; combined with the minimal efforts of the landlord to mitigate the loss of rent revenue entitles the landlord to compensation for one-half of October 2015 rent revenue in the sum of $500.00. The balance of this claim is dismissed.

As the tenant removed the lock without prior permission of the landlord, contrary to section 31(2) of the Act, I find that the landlord is entitled to the cost of replacing the

lock, as claimed. The landlord needed to be confident that she had the only keys to the rental unit.

There was no evidence before me that the tenant informed the landlord of the problem with the carpet at the doorway and while the carpet edges may have been tattered, I find that the tenant did not have the right to remove the carpeting. The landlord estimated the age of the carpet at five years. RTB policy suggests the useful life of carpeting is 10 years. Given the absence of detailed information on the estimate, clearly identifying the carpet from the lino costs, I find that the landlord is entitled to the sum of $181.71 for the carpet replacement. This takes into account the cheaper option quoted, carpet removal and installation, taxes and depreciation. The balance of the claim for carpeting is dismissed.

Based on the agreement of the tenant I find that the landlord is entitled to compensation in the sum of $79.41 for utility costs.

I find that the landlord has failed to prove, on the balance of probabilities that the tenant did not leave the rental unit in a reasonably clean state. I find that the pictures supplied by the landlord demonstrate the need for some minor cleaning. Therefore, I find that the claim for cleaning is dismissed.

	Claimed	Accepted
Loss of October 2015 rent revenue	$1,000.00	500.00
Lock replacement	175.28	175.28
Carpeting	828.82	181.71
Utilities	79.41	79.41
Cleaning	160.00	0
TOTAL	$2,243.51	$936.40

In relation to the tenants' claim for loss of quiet enjoyment, I find that the credibility of that claim is questionable. If the tenant had suffered a loss of quiet enjoyment during the tenancy there was no evidence before me that indicated the tenant took any steps to have the alleged interference cease. The tenant has collected dates and times of landlord contact, waited until the end of the tenancy and then made a claim. There was no evidence of any attempt, if the tenant had suffered a loss, to minimize the claim made. The tenant could have informed the landlord of the breach of the tenants' quiet enjoyment or given the landlord some sort of warning that the tenant was being bothered. The Act is not meant to punish a party. I do find that the placing of feces in the dogs' water bowl was uncalled for, but that single action does not entitled the tenant to compensation. Therefore, I find that the tenants' claim for loss of quiet enjoyment is dismissed.

I have considered the dispute in relation to completion of the move-in condition inspection report. There was no evidence before me that the landlord had scheduled a move-in inspection as required by section 23 of the Act. The landlord must give the

tenant at least two opportunities to complete the inspection and no evidence of the scheduling was submitted.

RTB policy #31 provides:

> *The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet.*

Section 24(2) of the Act provides:

Consequences for tenant and landlord if report requirements not met

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> ***(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord***
>
> *(a) does not comply with section 23 (3) [2 opportunities for inspection],*
>
> *(b) having complied with section 23 (3), does not participate on either occasion, or*
>
> *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

(Emphasis added)

Therefore, as I have determined the landlord did not provide the tenant with at least two opportunities to complete the move-in condition inspection I find that the landlord extinguished the right to claim against the pet deposit for damage caused by the pet. The landlord had a claim against the security deposit for utilities; therefore, extinguishment does not apply to that deposit.

The finding of extinguishment is also based on RTB policy #31, which provides:

> *The landlord may apply to an arbitrator to keep all or a portion of the deposit but only to pay for damage caused by a pet.*

Section 38(1) of the Act provides:

Return of security deposit and pet damage deposit

38 *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

> *(a) the date the tenancy ends, and*
>
> *(b) the date the landlord receives the tenant's forwarding address in writing,*

the landlord must do one of the following*:*

> *(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
>
> *(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

(Emphasis added)

Section 38(5) and (6) of the Act provides:

> ***(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2)*** *[landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
>
> ***(6) If a landlord does not comply with subsection (1), the landlord***
>
> > ***(a) may not make a claim against the security deposit or any pet damage deposit, and***
> >
> > ***(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.***
>
> (Emphasis added)

This means that when the landlord did not complete the move-in inspection, in accordance with the Act, that the landlord extinguished the right to claim against the pet deposit for damage to the rental unit and was required to return the pet deposit to the tenant within 15 days of the end of the tenancy and the date the forwarding address was given; whichever was later.

Therefore, pursuant to section 38(6) of the Act, I find that the landlord is holding a pet deposit in the sum of $1,000.00.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $986.40**,** in satisfaction of the monetary claim.

As each application had some merit I find that the filing fee costs are set off against the other.

Based on these determinations I grant the tenant a monetary Order for the balance of $563.60 ($1,500.00 pet and security deposits - $936.40)**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of $936.40; the balance of the claim is dismissed.

The landlord extinguished the right to claim against the pet deposit. The pet deposit is doubled to $1,000.00.

The landlord may retain the security deposit, in the sum of $936.40, in satisfaction of the claim.

The tenant is entitled to return of the balance of the pet deposit in the sum of $563.60. The balance of the tenants' claim is dismissed.

This decision is final and 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: April 19, 2016

Residential Tenancy Branch