



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MDNC, MNSD, MND, MNR, FF

Introduction

The hearing was convened subsequent to an Interim Decision dated May 03, 2016 to allow for provision of evidence in possession of both parties but not received by this hearing. The original application by the landlord was filed October 15, 2015 for a Monetary Order in compensation for loss, damage to the unit, and to retain the security deposit in partial satisfaction of the claim.

Both parties appeared in both teleconference hearing dates. The hearing was in possession of all evidence permitted under the Rules of Procedure. Both parties were provided opportunity to present their relevant evidence, inclusive of all oral evidence and relevant document evidence and to respond to the submissions of the other party. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. However, only the evidence relevant to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began May 01, 2015 as a written 1 year fixed term tenancy agreement ending April 30, 2016, however ended September 30, 2015. Rent in the amount of \$1850.00 was payable in advance on the first day of each month. The agreement also states the tenant was responsible for *70% utilities*. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$925.00, which they retain in trust. The tenancy ended September 30, 2015 when the tenant vacated pursuant to an undisputed 1 Month Notice to End personally given August 10, 2015. The tenant also provided the landlord with a redundant Notice to End on August 28, 2015.

The parties agree they conducted a mutual inspection of the unit at the start of the tenancy and at the end of the tenancy. The relevant condition inspection report (CIR) was provided by both parties, indicating the parties agreed the rental unit was absent of notable deficiencies at the

start of the tenancy. The CIR indicates that at the end of the tenancy the tenant did not agree with deductions from their security deposit and they agreed with the condition of the unit as itemized in the report: but not as to Section Z. of the report which the landlord acknowledged completing after the tenant had signed Section 1. and 2. of the CIR. The agreed circumstances within the CIR state that a quanta of light bulbs was missing or burnt out, and the thermostat and a front door screen were damaged.

The parties agreed at the start of the tenancy the rental unit contained a functioning and operable dishwasher. The tenant did not like how it performed; therefore the landlord installed a different dishwasher which the tenant also rejected. The tenant purchased their choice of a new dishwasher which the landlord agreed to install for the tenant. At the end of the tenancy the tenant removed the dishwasher and the landlord replaced it with one of their own dishwashers to reflect the circumstances prevalent at the outset of the tenancy. The landlord testified it required 3 hours to replace the final dishwasher. The landlord seeks compensation for their initial install of the dishwasher purchased by the tenant and the resulting return of another dishwasher after the tenant removed their dishwasher from the rental unit in the sum of \$250.00 for each occurrence. Both parties acknowledged there was no discussion or agreement for the tenant to pay the landlord for the initial installation, nor any effective discussion as to what would occur in respect to the tenant-purchased dishwasher at the end of the tenancy.

The parties discussed and ultimately agreed the tenant would compensate the landlord \$300.00 for all of the landlord's claims related to painting, and I will so order.

The landlord claims the tenant removed the rental unit smoke detector and did not replace it. The tenant claims the detector effective date had expired so it had been discarded. The landlord did not dispute the detector effective date had expired. The landlord provided a receipt for a 2 PK (2 in one package) smoke detector in the total amount of \$45.43.

The landlord claims the tenant damaged the thermostat. The tenant denied the landlord's claim stating the thermostat worked as intended throughout the tenancy. The landlord provided a photograph of the thermostat claiming the image indicated the unit was broken. The landlord also provided a receipt for a new thermostat in the taxed amount of \$35.82.

The landlord claims the tenant left a door in the unit without the resident lockset. The tenant acknowledged they had replaced the lockset with one of their choosing and had not replaced the original lockset before they left however leaving the lockset parts uninstalled. The landlord provided a receipt for a new lockset in the taxed amount of \$35.82.

The tenant acknowledges that at the end of the tenancy the rental unit was missing some light bulbs and some light bulbs were at the end of their life, in the sum of 8 light bulbs of various configurations. The landlord provided a receipt for 8 new light bulbs in the taxed amount of \$49.50.

The tenant acknowledged that at the end of the tenancy a screen door screen was left damaged. The tenant argued the screen had peeled back from the retaining seal at one of the corners as result of repeated use. The landlord provided a receipt for materials for a door screen repair.

The landlord claims that at the end of the tenancy the kitchen sink strainer/stopper was missing. The tenant testified they were not aware of its absence. Regardless, the landlord provided a receipt for a strainer in the after tax amount of \$6.77.

The landlord claims loss of rent revenue and related utilities for the month following the month the tenant vacated, October 2015. The parties agreed the tenant's rent and portion of utilities was current to September 30, 2015. The landlord claims the tenant did not allow them to show the rental unit to prospective renters at the outset of September 2015, which the landlord had organized. The landlord provided a list of prospective renters and 2 letters to the tenant requesting access to the unit for showings, dated September 01 and September 04, 2015 indicating proposed times of a weekend between 1:00 and 6:00 p.m. and 4 days the weeks following with proposed times of times between 5:30 and 7:30 p.m. The tenant disagreed and refused the landlord's proposed times. The tenant claims that they no longer occupied the rental unit as of September 09, 2015, although all of their belongings remained to month's end. The tenant argued the landlord could have entered the unit, unencumbered, after September 09, 2015. The landlord testified the tenant did not notify them they no longer occupied the unit after September 09, 2015, and regardless, the tenant had installed an alarm system for which he did not have a code. The tenant claims that the landlord's inappropriate conduct toward her and her children had caused her to install an alarm in the first place and drove her decision to no stop occupying the rental unit. They claim the landlord could have requested the code by calling them so as to accommodate showings. The landlord testified that by the time they got back to most of the prospective tenants they had found other accommodations. The landlord claims rent of \$1850.00 and utilities of \$67.00 for the month of October 2015.

Analysis

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

The landlord, as applicant, bears the burden of proving their monetary claims.

I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: deterioration in excess of wear and tear.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and for damages made herein:

7. 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.
- 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.

Effectively, the landlord bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary value or amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

I find there was no agreement between the parties the tenant was to pay the landlord for installing the tenant-purchased dishwasher near the outset of the tenancy. As a result, I dismiss the landlord's claim to install the tenant-purchased dishwasher. However, I accept that at the outset of the tenancy the rental unit contained a functioning dishwasher which the landlord agreed to remove to accommodate the tenant's dishwasher. I accept that at the end of the tenancy the rental unit was minus the originally dishwasher. I find it appropriate that the landlord should be compensated for the re-installation of the original dishwasher. The landlord is claiming \$250.00 which I find is extravagant for 3 hours of their labour. As a result I grant the landlord **\$100.00** for the final dishwasher re-install.

I grant the landlord the parties' agreed amount of **\$300.00** for painting.

I find the landlord effectively did not dispute that the missing smoke detector was at the end of its useful life, despite it being discarded by the tenant. I find the landlord has not suffered a loss in this respect, and this portion of their claim is dismissed.

I find the landlord has not provided sufficient evidence the thermostat was damaged or that damage resulted as a result of the tenant's doing. Therefore, this portion of their claim is dismissed.

At the start of the tenancy a door was equipped with a lockset and at the end of the tenancy it was absent of a lockset. I find the landlord's course to install a new lockset was reasonable and I grant the landlord the claimed amount for a new lockset: **\$35.82**.

I find that **Residential Tenancy Policy Guideline 1. - Landlord & Tenant – Responsibility for Residential Premises – light bulbs**, explains that the landlord is responsible to ensure all light bulbs operate as intended at the start of the tenancy and that tenants are responsible to replace the same light bulbs during a tenancy. I accept the evidence from both parties that there were 8 light bulbs missing or inoperable at the end of the tenancy. I accept the landlord's receipted claim for light bulbs in the amount of **\$49.50**.

In the absence of sufficient evidence in respect to the claimed damaged door screen, I find the tenant's claim that the screen door screen became compromised through repeated wear and tear, reasonable. As a result, I find the Act states a tenant is not responsible for reasonable wear and tear; therefore, I dismiss the landlord's claim for repair for a door screen.

I have not been provided sufficient evidence the tenant was responsible for a missing sink strainer. As a result I dismiss this portion of the landlord's claim.

I am satisfied by the landlord's evidence that they secured prospective tenants for October 2015 and made reasonable attempts to show the unit in the early weeks of September 2015 - the time prospective tenants typically are in search of new accommodations. I accept the tenant's objections to allowing the landlord showing of the unit if the proposed times were not convenient to them. However, it is not in the tenant's interest to not make compromises in this type of situation if at all possible, when the landlord is attempting to also accommodate the times and needs of prospective tenants, as well as the times and needs of the outgoing tenant. I find the tenant's response to the landlord's original proposal of the first weekend in September between the hours of 1:00 – 6:00 p.m. was absent of a reason, although later provided. I also find the tenant has not supported their claim the landlord ought to have known the tenant no longer occupied the unit after September 09, 2015. In contrast to the landlord's evidence, *I prefer* the evidence of the landlord that they made reasonable efforts to show the unit and the tenant failed to reasonably co-operate. As a result, I find the tenant responsible for the landlord's inability to re-rent the unit for October 01, 2015. None the less, I find the landlord has failed to provide evidence of any efforts made to re-rent the unit for the remaining portion of October 2015, for example, for October 15 or some other time. As a result, I grant the landlord loss of revenue for October 2015 in the set amount equivalent to ½ month's rent of **\$925.00**. As the tenant did not occupy the rental unit in October 2015, it cannot be said the tenant owes utilities for that month. Therefore the balance of this portion of the landlord's claim is dismissed.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

The security deposit will be offset from the award made herein. *Calculation for the Monetary Order is as follows:*

Dishwasher re-install	\$100.00
Painting – agreed	\$300.00
Lockset	\$35.82

light bulbs	\$49.50
Loss of revenue – October 2015	\$925.00
filing fee	\$50.00
<i>less tenant's security deposit: in trust</i>	<i>-\$925.00</i>
Monetary Order to landlord	\$535.32

Conclusion

The landlord's application in part has been granted, and the balance is dismissed.

I Order that the landlord may retain the security deposit of \$925.00 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **\$535.32**. 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: June 07, 2016

Residential Tenancy Branch