Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROTECTION PROPERTY MGT.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:
Both parties attended the hearing and confirmed receipt of each other's Application for Dispute Resolution by registered mail. . I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) A monetary order pursuant to Sections 7 and 67 for damages to the property;
b) An Order to retain the security deposit pursuant to Section 38; and
c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

d) For a return of twice the security deposit pursuant to section 38 and refund of other deposits; and
f) To recover the filing fee for this application.

Issue(s) to be Decided:
Has the landlord proved on the balance of probabilities that the tenant did damage to the property, which it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice her security deposit refunded and to recover other deposits and filing fees for the application?

Background and Evidence:
Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced March 1, 2015, that rent was $1675 a month and a security deposit of $837.50 and a pet damage deposit of $837.50 was paid. Additionally a deposit of $200 for fobs was made. The landlord returned the pet damage deposit and the fob deposit but has

retained the security deposit. The tenant contends the pet damage deposit was returned late in March 2016 which is outside the 15 days allowed under section 38 of the Act.

The landlord claims as follows:

- $147 for cleaning carpets. The lease term provides carpets must be professionally cleaned. The tenant said she cleaned them herself.
- $172.20 for repairs and bulbs. The tenant said there was just a screw missing from the refrigerator handle, the microwave had duct tape on it and she just removed it and many bulbs were burned out at the beginning of the tenancy. When she replaced them, they burned out almost immediately so she told the landlord the kitchen fixture must be defective and she left bulbs on the counter for it. She noted outside bulbs were never replaced. The landlord said the strata caretaker was informed of the outside bulbs and they assumed they had been replaced as the tenant did not report on it again.
- $157.50 for cost of removing items dumped by the tenant. The tenant said the photo does not show her, she did not dump anything, her goods were moved on February 25, 2016 and the photo is taken on February 29, 2016.

The tenant claims double her security deposit refunded in accordance with section 38 of the Act. She said she signed the Condition Inspection Report at move-out with "TBD" on it beside the security deposit to be refunded because she was assured she would get her security deposit within 7 days and she assumed she would get an invoice and pay for damages claimed.

In evidence are invoices, emails and photos regarding dumping of items by the tenant and the move-in and move out reports.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord has satisfied the onus of proving the carpets needed to be professionally cleaned at a cost of $147 as invoiced. Although the tenant may have cleaned them, I find the evidence of the move-out report supports the landlord's claim that they were stained. At move-in this is not noted. Furthermore, I find the tenancy agreement and also Policy Guideline 1 of the Residential Policy Guidelines state it is the tenant's responsibility to have carpets professionally cleaned at the end of the tenancy. I find the landlord entitled to recover $147 for carpet cleaning.

I find Guideline 1 provides that replacing burnt out lightbulbs are normally a tenant's responsibility. However, I find the move-in report notes several bulbs missing or not working so I find insufficient evidence that the tenant is responsible for the landlord's cost for this item. The invoice for repairs and bulb replacement is not broken down so I will assign an arbitrary amount for bulb replacement of $30 which leaves $142.20 claimed for the other repairs.

In respect to repairs to the microwave and stove, I find sufficient evidence that repairs were necessary due to the tenant's actions. Although she claimed they were broken at move-in, I find the move-in report does not support her allegation. Furthermore, she notes on the move-out report that the microwave vent and fridge freezer door were broken within the 1st month and claims they were maintenance issues and responsibility of the landlord. I find these are not normal maintenance items of the landlord when the tenant breaks them. Even though these items may have broken within a month of move-in, I find the weight of the evidence is that the tenant's actions broke them so I find the tenant responsible for the cost of repair which is $142.20 as adjusted above.

Regarding the cost of removing dumped items, I find insufficient evidence that these items were dumped by this tenant. As the tenant pointed out, the photograph is not legible and she had moved out on February 25, 2016. The photos were sent by the caretaker on March 2, 2016 when he said the "tenant moved out yesterday". All the testimony of both parties, I find, confirmed the tenant had moved out and the inspection was done on February 29, 2016. Therefore I find the landlord not entitled to recover the cost of the moving truck and men to remove the dumped items.

On the tenant's application, the onus is on her to prove on the balance of probabilities that twice the security deposit should be refunded in accordance with section 38 of the Act. I find the tenant vacated on February 29, 2016 and provided her forwarding address in writing on February 29, 2016; the landlord did not deny this. I find the landlord has not refunded the tenant's security deposit and they filed their application on April 14, 2016 which is well beyond the 15 day limitation set out in section 38 of the Act.

Section 38 of the Act provides:
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.
(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
(b) after the end of the tenancy, the director orders that the landlord may retain the amount.
(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.

The landlord's representative doing the inspection noted beside the damage deposit "TBD" (meaning to be determined) and listing the damages. The landlord contended in the hearing that this was permission to retain the deposit until damages were determined but the tenant vigorously denied this. I find this note insufficient to meet the requirement under section 38 (4) above of permission in writing to retain an amount. I find the tenant entitled to recover twice her security deposit. Although she contended she also received the refund of her pet deposit late, I find she provided insufficient evidence of when the landlord mailed her pet damage deposit. She has this deposit refunded so I dismiss her claim for twice that amount.

Conclusion:

I find the parties entitled to monetary orders as calculated below. I find them both entitled to recover filing fees for their applications as both had merit.

Calculation of Monetary Award:

Original security deposit	837.50
Twice deposit	837.50
Filing fee	100.00
Less carpet cleaning cost	-147.00
Less repair allowance	-142.20
Less landlord filing fee	-100.00
Balance in Monetary Order to Tenant	1385.80

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: July 27, 2016

Residential Tenancy Branch