



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENSON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPB MND MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord under the *Residential Tenancy Act* (the “*Act*”) for an order of possession based on the tenant breaching an agreement with the landlord, for a monetary order for damage to the unit, site or property, for authority to keep all or part of the tenant’s security deposit, and to recover the cost of the filing fee.

An agent for the landlord (the “agent”), the tenant, the husband of the tenant, and a family friend/interpreter of the tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding service of documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the agent confirmed that as the tenant vacated the rental unit on April 8, 2016, the landlord was no longer seeking an order of possession. As a result, the order of possession was not considered further as part of the landlord’s Application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant’s security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on September 1, 2015 and was scheduled to end on August 31, 2016; however, the tenant vacated the rental unit early on April 8, 2016. Monthly rent in the amount of \$1,600.00 was due on the first day of each month. A security deposit of \$800.00 was paid by the tenant, which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$942.90 which contained a mathematical error and should have read \$992.90, which is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Fix broken door and paint	\$250.00
2. Fix door lock and parts	\$50.00
3. Carpet shampooing	\$80.00
4. General cleaning	\$150.00
5. Prorated rent (April 1-8, 2016)	\$412.90
6. Strata fine (illegal move out)	\$50.00
TOTAL	\$992.90

Regarding item 1, the agent referred to the incoming condition inspection report which was not completed. The landlord failed to complete an outgoing condition inspection report. The agent claims that the landlord suffered a loss of \$250.00 to repair a broken door in the rental unit. The tenant denies damaging the door. The agent referred to a photo submitted in evidence that showed a damaged door and a photo after it was repaired. The tenant confirmed that they are not sure if the door was damaged by the person who sublet the rental unit before the tenancy ended. The agent confirmed that there was no photo taken of the door at the start of the tenancy before the alleged damage to the door.

The agent referred to a document that was not dated and was written in a different language other than English. The agent admitted that he wrote "Fix broken door and paint" on the invoice himself and contained the amount of "\$250" and did not have a company name, tax information, contact information, etc.

Regarding item 2, the agent stated that he was relying on the same evidence from item 1 for item 2 and that the same receipt included the amount of "\$50" where the agent wrote "Fix door lock & paint" on the invoice. As noted above, the invoice was not dated, did not have a company name, tax information etc.

Regarding item 3, the tenant confirmed that they did not submit any receipts to support that the carpets were shampooed or steam-cleaned at the end of the tenancy. The agent submitted an invoice dated April 16, 2016 which supports that \$80.00 was paid for steam carpet cleaning at the rental unit. The company name on the invoice is a carpet cleaning company with tax information, business license number, and contact information. The agent also submitted two photos of the carpets which the agent indicated showed dirty carpets at the end of the tenancy. The tenant did not have a response to the landlord's photos.

Regarding item 4, the agents testified that the tenant failed to properly clean the rental unit at the end of the tenancy. The agent referred to several photos in evidence to show a dirty rental

unit. The tenant confirmed that there were no photos taken by the tenant to support that the tenant left a clean rental unit at the end of the tenancy. The agent also referred to the same invoice described in item 3 above, which included the amount of \$150.00 for moving out cleaning. The company name on the invoice is a carpet cleaning company with tax information, business license number, and contact information.

Regarding item 5, the agent testified that as the tenant did not return the key to the rental unit until April 8, 2016, the landlord is seeking loss of rent from April 1-8, 2016, inclusive in the amount of \$412.90 by using this calculation:

$$\$1,600.00 \times 8 \text{ days divided by } 31 \text{ days} = \$412.90$$

Regarding item 6, the agent testified that they were seeking \$50.00 for the move out fee charged by the strata which was dismissed during the hearing as the landlord failed to supply a copy of a signed Form K document to support that the tenant had agreed to the strata rules and were aware of them at the start of the tenancy.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items 1 and 2 – The landlord has claimed \$250.00 to fix a broken door and paint and \$50.00 to fix door lock and parts which are described earlier in this Decision. The incoming condition inspection report submitted in evidence was not completed by the landlord with only a few lines completed and the remaining being left blank. In addition the landlord failed to complete the outgoing condition inspection report.

Section 23 of the *Act* requires a landlord to complete a condition inspection report at the start of the tenancy in accordance with the Regulation. Section 35 of the *Act* requires a landlord to complete a condition inspection report at the end of the tenancy in accordance with the Regulation. I find the landlord failed to fully complete the incoming condition inspection and the outgoing condition inspection report which I find makes the condition inspection report to be of no weight.

Furthermore, I note that the landlord has failed to submit any photos of the door at the start of the tenancy to support that it was broken during the tenancy. And finally, I find the undated invoice with no tax information and that was written in a different language other than English to be of no weight as the agent confirmed he added his own writing to the document.

Based on the above, I **dismiss** items 1 and 2 of the landlord's claim **without leave to reapply**, due to insufficient evidence.

Item 3 – Regarding item 3, section 37 of the *Act* requires that a tenant leave the rental unit reasonably clean less reasonable wear and tear. Based on the photos submitted by the landlord, I find the tenant breached section 37 of the *Act* by failing to clean the carpets at the end of the tenancy. In reaching this finding I have considered that the tenant failed to provide a receipt for carpet cleaning and the landlord provided in invoice in the amount as claimed in the amount of \$80.00. As a result, I find the landlord has met the burden of proof for this portion of his claim and I award the landlord **\$80.00** accordingly.

Item 4 – Consistent with my finding for item 3 described above, I find the landlord has also provided sufficient evidence that the rental unit required cleaning at the end of the tenancy as the landlord provided photos to support that the rental unit was in need of cleaning and was not left in a reasonably clean condition. Furthermore, I have considered that the tenant did not have a response to the landlord's photos which I find support that the rental unit was dirty and required cleaning as claimed. Given the above, I find the tenant breached section 37 of the *Act* and I award the landlord **\$150.00** for this portion of their claim.

Item 5 - Regarding item 5, the agent testified that as the tenant did not return the key to the rental unit until April 8, 2016, the landlord is seeking loss of rent from April 1-8, 2016, inclusive in the amount of \$412.90 by using this calculation:

$$\$1,600.00 \times 8 \text{ days divided by } 31 \text{ days} = \$412.90$$

I note that the landlord's calculation is incorrect as April 2016 has 30 days and the per diem rental amount should actually be \$53.33 multiplied by 8 days which equals \$426.64. Although this amount is slightly higher than the \$412.90 amount as claimed by the landlord, I find the landlord is entitled to **\$426.64** as the tenant breached section 26 of the *Act* by failing to pay rent on April 1, 2016 and that the landlord suffered a loss of rent of eight days accordingly.

Item 6 – As described above, item 6 was dismissed during the hearing as the landlord failed to provide a Form K document signed by the tenant to support that the tenant was aware of the strata rules and had agreed to comply with them at the start of the tenancy. This item is **dismissed without leave to reapply** due to insufficient evidence.

As the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee in the amount of **\$100.00**. The landlord continues to hold the tenant's security deposit of \$800.00 which has accrued \$0.00 in interest to date.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$756.64** comprised of \$80.00 for item 3, \$150.00 for item 4, \$426.64 for item 5, plus \$100.00 for the recovery of the cost of the filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit of \$800.00. **I authorize** the landlord to retain **\$756.64** of the tenant's security deposit of \$800.00 in full satisfaction of the landlord's monetary claim.

I ORDER the landlord to pay the tenant the remainder of the tenant's security deposit by **November 30, 2016**. Should the landlord fail to comply with my Order, I grant the tenant a monetary order under section 67 for the balance due to the tenant for the remainder of their security deposit in the amount of **\$43.36**.

I caution the landlord to comply with section 23 and 35 in the future by fully completing the condition inspection report in accordance with the *Act* and Regulation.

I caution the tenant to comply with section 26 and 37 of the *Act* in the future.

Conclusion

The landlord's application is mostly successful.

The landlord has established a total monetary claim in the amount of \$756.64. The landlord has been authorized to retain \$756.64 of the tenant's \$800.00 security deposit in full satisfaction of the landlord's monetary claim. The landlord has been ordered to pay the tenant \$43.36 by November 30, 2016. Should the landlord fail to comply with my Order, I grant the tenant a monetary order under section 67 for the balance due to the tenant for the remainder of their security deposit in the amount of \$43.36. If the tenant requires enforcement of the monetary order, the tenant must first serve the landlord with the order of possession and then it may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord has been cautioned to comply with section 23 and 35 of the *Act* in the future.

The tenant has been cautioned to comply with section 26 and 37 of the *Act* in the future.

This decision is final and binding on the parties, unless otherwise provided under the Act, 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: November 14, 2016

Residential Tenancy Branch