



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The landlord's representatives, the tenant and a legal advocate for the tenant attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant's documentary evidence was sent just two days prior to the hearing to both the landlord and the Residential Tenancy Branch (RTB) and was not before me at the start of the hearing. Therefore, pursuant to rule 3.15 of the Rules of Procedure which states that the respondent must submit their evidence so that it is received by the RTB and the other party not less than 7 days prior to the hearing, I find that the tenant

delayed in sending their evidence and therefore I have excluded the tenant's documentary evidence.

The tenant confirmed receipt of the landlord's evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on August 28, 2006. Rent for this unit started at \$650.00 per month and increased to \$801.00 over the course of the tenancy. The tenant paid a security deposit of \$325.00 at the start of the tenancy. The parties attended a Move in condition inspection of the rental unit at the start of the tenancy; however at the end of the tenancy the move out inspection was conducted in the tenant's absence. The tenant provided a forwarding address to the landlord in writing on May 18, 2016.

The landlord testified that the tenant was served with an Order of Possession previously gained at an RTB hearing. The tenant should have vacated the rental unit by 2.00 p.m. on April 30, 2016 but she did not vacate until after the deadline. The tenant failed to leave the unit reasonably clean and did not repair damage caused in the unit to six doors.

The landlord testified that they attempted to contact the tenant by phone on May 02 and May 03 to schedule the move out inspection but they were unable to contact the tenant. The landlord posted a Notice for a final opportunity for inspection on the door of the rental unit on May 03, 2016 as they did not have a forwarding address for the tenant at that time. The move out inspection was then conducted in the tenant's absence. The landlord testified that as the tenant failed to attend the move out inspection of the rental unit the tenant has extinguished her right to recover the security deposit. The landlord seeks an Order to be permitted to keep the security deposit and any applicable interest.

The landlord referred to the move out inspection report and their photographic evidence showing damage to six doors in the unit. The landlord testified that this damage was caused deliberately and is not normal wear and tear. The doors have what appears to be punch holes in them and the doors could not be repaired and had to be replaced. The landlord referred to their invoice for this work and seeks to recover \$600.00 for the labour to install the new doors, \$270.00 for the doors and \$145.00 to paint the doors to a total amount of \$1,015.00.

The landlord testified that the doors were approximately 15 years old but as this damage was caused deliberately then there should be no deductions for depreciation. The landlord requested that the security deposit and interest is offset against the landlord's monetary claim for the doors. The landlord testified that originally they had also claimed to recover cleaning costs; however, as they decided to renovate the unit they no longer seek to cleaning costs from the tenant.

The tenant testified that she did not receive any phone calls or messages from the landlord about attending a move out inspection. The tenant agreed that during the course of her tenancy the doors were damaged by her son. The tenant disputed the landlord's claims that the doors could not be repaired and the tenant had attempted to fix one of the holes by putting putty in layers in the holes but she did not complete any

of the repairs as the landlord had removed the tenant's roommate from the home who was helping her.

The tenant's advocate submitted that the tenant's roommate was living with the tenant and helping her with rent and repairs but he was evicted as he was not an authorised occupant. At the previous hearing the tenant advised that her roommate had moved out and the landlord said he did not have a problem with the tenant living there but then the tenant received another eviction notice and the landlord then said he had been having problems with the tenant for 10 years. When the tenant's roommate moved out this changed the tenant's life dramatically.

The tenant's advocate submitted that had the landlord wanted to do a move out inspection with the tenant at the end of the tenancy the landlord could have arranged this with the tenant before she vacated.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows: With regard to the landlord's claim for damage to the doors in the unit. The tenant agreed that these doors were damaged during her tenancy and that although she had attempted to repair them she did not have time. The tenant does dispute that the landlord could not have repaired the doors rather than replace them. I find the holes in the doors are more than small holes which would require a substantial repair with no guarantees they would be as good as they were at the start of the tenancy.

I refer the parties to s. 32(3) of the *Act* which states that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Consequently I find the tenant did not repair the doors and therefore the landlord is entitled to replace the doors and seek to recover these costs from the tenant.

With this in mind I have considered the age of the doors and direct the parties to the Residential Tenancy Policy Guidelines #40 which provides guidance on the useful life of building elements. These guideline states, in part, that the useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. I must therefore take into consideration the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement. This guideline indicates that the useful life of a door is 20 years. As the landlord testified that the damaged doors were approximately 15 years old I must make a deduction for the cost of the doors of 75 percent. I therefore find the landlord is entitled to recover **\$600.00** in labour costs to fit the new doors, **\$145.00** to paint the new doors and **\$67.50** for the cost of the doors taking into account the depreciated value.

The parties both raised issues concerning the move out inspection. I refer the parties to s.36 of the Act which states:

36 (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the 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 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The tenant did not attend the move out inspection but I find that as the landlord did not arrange an inspection with the tenant prior to her vacating the rental unit and the landlord posting a notice of final opportunity to attend an inspection on the door of the rental unit after the tenant had vacated then the landlord should have known that the tenant would not have received that Notice. I therefore find the landlord did not meet their obligations to provide two opportunities for inspection to the tenant and the landlord has extinguished their right to file a claim against the security deposit.

I find however, that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$325.00** of the security deposit and **\$10.41** of accrued interest on the security deposit to partially compensate the landlord for the damages.

As the landlord's application has merit I find the landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* as follows:

Damage to the doors	\$812.50
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$335.41)
Total amount due to the landlord	\$577.09

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$577.09**. The Order

must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: November 18, 2016

Residential Tenancy Branch