



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened in response to a successful application for review by the tenant. The landlord's application was made March 18, 2016 and the original hearing was attended solely by the landlord on July 27, 2016, with a Decision dated August 04, 2016. The original hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent - Section 67
- a monetary order and for damage and loss – Section 67
- to retain the security deposit in partial satisfaction of claims – Section 38
- to recover the filing fee from the tenant – Section 72

Both parties: tenants with their agent and legal counsel, and the landlord and their son attended this review hearing. Both parties were given opportunity to present all *relevant evidence*, affirmed testimony and also present witnesses in respect to the claim, and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Both parties confirmed and acknowledged receiving the evidence of the other as also provided to this hearing. I accept the landlord's testimony that they may have received some of the tenant's evidence by a method other than prescribed in the Act, but acknowledge receiving it none the less. I accept the landlord's testimony they had time to review the tenant's evidence, they understand it, and despite lacking agreement with it are able to respond to it. Therefore I deemed it admissible. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant *undisputed* evidence in this matter is as follows. The tenancy started April 15, 2013 as a written tenancy agreement. The tenancy has since ended in April 2014. Rent in the amount of \$2600.00 was payable in advance on the fifteenth (15) day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$1300.00 which they retain. The parties agreed they mutually conducted a *move in* inspection and recorded it on a signed Condition Inspection Report (CIR) submitted into evidence. The parties agree that all rent owed to April 15, 2014 was satisfied and that to date the tenant has not provided the landlord with a written forwarding address. The parties further agreed that the landlord's son, ZO, has acted as landlord in the administration of the tenancy (jointly, the landlord).

The relevant, largely *disputed* evidence is as follows. The tenant testified they personally provided the landlord's son with a written tenant's notice on or about February 01, 2014 stating they were vacating 2 months later. Tenant NH testified they vacated at the end of March 2014 and AH provided an affidavit they were last to vacate on April 15, 2014. The landlord testified they did not receive any forewarning or written notification from the tenant they were vacating and only learned the tenant was vacating on April 15, 2016 via a text from the tenant on the same day. The tenant confirmed sending the undated text. The landlord and the tenant each provided the same undated text to the landlord with tenant stating they had moved out and staying with a friend. The tenant's text acknowledges the house as "messy", and states that, "the \$1300.00 deposit . . . is more than sufficient to have it cleaned and carpets shampooed". The parties agree the text also contained an e-mail address for the tenant.

The landlord testified that in their absence of a notice from the tenant and upon receiving the tenant's text, they deemed the tenant was abandoning the unit and had no way of contacting the tenant to arrange for a move out inspection. The tenant testified their text contained an email address by which the landlord has never contacted them.

The landlord testified they took a series of photo images on April 15, 2014 which they provided and which the landlord relies to support their claims. The landlord testified they also inspected the unit on April 15, 2014 and recorded the results of the inspection on the CIR. The landlord was apprised the *move out* portions of their CIR are neither dated nor signed by anyone, but the landlord is relying on it to support their claims.

The landlord's CIR states the rental unit was left largely unclean (marked DT), with damaged walls and trim (marked D), missing light fixture bulbs (marked M), missing keys to the unit (marked M) and a broken toilet (marked B). The landlord's CIR also states the tenant left behind containers of garbage, tools, tires, suitcases, and tables in

the garage area and “unwanted clothes, pornography, DVD/CD” inside the “storage” area. The landlord’s CIR does not list or identify other deficiencies.

The landlord’s photo images depict rooms in the rental unit with an abundance of strewn household items, including food items in the refrigerator, containers of laundry detergent, filled laundry hampers, bathroom amenities including shampoo, toiletries and a bath mat, boxed items and furniture items. Most of the items in the photo images are not identified on the CIR. The tenant testified the items in the photo images are not known to them, other than one photo image containing a television and other castoffs in the garage.

In personal sworn affidavits and in supporting sworn affidavits the tenants submit they vacated the unit by April 15, 2014 and leaving the rental unit in reasonable condition, and in considerable contrast to the landlord’s claims. None the less, they state they left some items of furniture, “which we did not believe were required to be removed”. The tenant did not elaborate on the statement however acknowledged leaving bags of garbage, and the carpeting was in need of additional cleaning. The tenant denies anything was left damaged or broken, or that they left behind clothing, toilet paper inserts, used condoms, undergarments, books, photographs, pornography, drug paraphernalia, or an array of office equipment as claimed by the landlord.

The landlord submitted a *Time Sheet* purportedly for labour containing 81 entries of 1 to several hours per day for almost each day spanning exactly 3 months starting April 15, 2014. The *Time Sheet* totals 213 hours and an additional 3 hours for March 17, 2016: unexplained and almost 2 years after the end of the tenancy. The landlord’s tally is a total of 216 hours at \$25.00 per hour claimed to be the total of solely the landlord’s own *labour* to reportedly remediate the rental unit following the tenancy, in the sum of \$5400.00. None of the 81 time entries state as to what they relate. Regardless, the landlord explained the remediation of the unit spanned 3 months as work was done as funds and time permitted. In the interim the rental unit went unoccupied and the landlord seeks to hold the tenant accountable for that time. The landlord claims for the 3 months of labour in the amount of \$5400.00 and for loss of revenue for 3 months of \$7800.00, in the sum of \$13,200.00. Alternatively, the landlord seeks compensation for loss of revenue for lack of a tenant’s notice to vacate in accordance with parties’ agreement for the tenant to provide 60 day notice when vacating.

The landlord also submitted an abundance of purchase receipts and ledger listing the retailers where 36 purchases were made in the sum of \$1045.04. The landlord purports the receipts state the purchase however this is not clear. A second ledger lists 12

additional retailers in respect to purchases and in this case the reason behind the purchase is stated as:

Toilet replacement	\$398.72
Toilet repair, iron gate repair	\$600.00
Toilet repair	\$131.36
Toilet & shower repair	\$194.25
Junk removal	\$207.90
Re-Key locks	\$325.50
Cleaning supplies	\$18.75
Dishwasher repair	\$112.65
Damage repair / plumbing	\$257.25
	\$6.71
Fortis bill owed	\$119.16
Housekeeping Service	\$181.13
In the additional sum of	\$2553.38.

Therefore, the landlord seeks compensation in the total of \$16,807.42 comprised of:

\$7,800.00	loss of rent revenue: April 15 - July 15, 2014
\$3,607.42	receipted purchases
\$5,400.00	landlord's labour @\$25.00/hr.

The tenants testified that on review of the landlord's photo image evidence they recognized the room surroundings depicted but could not recognize any of the items depicted, other than some of the containers of garbage and some of the furniture: a desk and large projection television. In support of their version of events the tenant provided a witness;

Witness AT: a friend of the tenant – provided affirmed testimony

The witness referenced a sworn affidavit provided into evidence. The witness testified they helped the tenants move out of the rental unit in March and April 2014. The witness testified they utilized a pick-up truck to move most of the tenant's possessions including large furniture items. Their recollection is that they vacated the rental unit of all but some items of furniture and containers of garbage. The witness was asked to comment on the photo images provided by the landlord. The witness testified that solely one photo depicting a room with a hardwood floor and a large television console matched their recollection upon leaving the unit. The witness disagreed that the images depicted the condition of the unit after they finished moving. The witness generally disagreed with the landlord's assessment of the unit.

Analysis

The landlord, as applicant, bears the burden of proving their monetary claims. The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, and more can be accessed via the website: www.gov.bc.ca/landlordtenant.

I have reviewed all relevant evidence of the parties. On the preponderance of the relevant document and photograph 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*: that is, wear in excess of normal and breakage caused by the tenant's neglect or otherwise by their conduct.

Section 7 of the Act provides as follows in respect to 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 must satisfy each component of the test below:

1. *Proof the damage or loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant (landlord) followed section 7(2) of the Act by taking reasonable steps to minimize the loss.*

The landlord bears the burden of establishing their claims by proving the existence of damage or 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 reasonably mitigate the loss claimed.

Claim for damage and loss / labour

The landlord relies on their Condition Inspection Report (CIR) and 39 photo images as well as an abundance of sales receipts and the *Time Sheet*. Besides the CIR being solely the landlord's version, I find the CIR entries are cursory other than for the garage and storage areas. I find the CIR does not effectively reflect the conditions depicted in the photo images. Conversely, the depictions in the photo images are not aptly documented on the CIR.

Never the less, on summary review of the landlord's evidence the following were noted. The landlord claims the tenant damaged the dishwasher; however the CIR states the condition of the dishwasher as 'good'. I find some of the landlord's photo images do not make sense. As example, one photo image depicts several dining chairs in the garage which are also depicted in another photo inside a truck. The same garage space is then depicted in another photo image occupied by completely different items including the projection television, which in turn is also depicted in a different photo image in a different room. As a result, I do not accept the landlord's photo images were all taken at the same time nor likely taken on the same day. Rather, I find the landlord's images more aptly portray the condition of the rental unit *in midst* of a move rather than after the tenancy's end. I do not accept the landlord's photo images reliably depict the condition of the unit *after* the tenant vacated, as claimed by the landlord.

As a result of the above, I place limited evidentiary weight on the landlord's CIR and their photo images of inside the rental unit as proving the state of the rental unit at the end of the tenancy. However, I accept the landlord's 2 photo images of the junk removal truck depicting removal of the tenant's furniture castoffs.

I have attempted to reconcile the landlord's receipted claims. It was available to the landlord to reference in their ledger the damage to which a purchase relates rather than the retail outlet, but they did not. I did not find the ledger totalling \$1045.04 helpful in identifying what the associated receipts are for, or to what damage they refer in any of their ledgers, including the *Time Sheet* for labour. However, I accept by the nature of some of these receipts that they are for vehicle fuel, cleaning, plumbing items,

miscellaneous hardware items, and municipal dumping fees (for which the landlord has claimed twice).

I have reviewed the landlord's hand-written receipted claims ledger totalling \$2553.38 which I found contains more useful information. I am unable to reconcile the landlord's claim for 2 toilets and the installation cost for 2 toilets given the landlord's own evidence that there was only 1 toilet purportedly "broken". However, I also note that none of the landlord's photo images depict broken toilets. I do not accept the landlord's invoices for 2 new toilets. Collaterally I do not accept the landlord's multiple invoices for toilet repairs. There is no evidence the tenant broke the toilet. There is no evidence justifying the purchase of 2 new toilets rather than 1, and a month later paying for professional installation for 2 toilets rather than 1. The landlord's claim for toilet repairs dated 6 months after the tenancy and 2 months after installing 2 brand new toilets simply does not make sense. As a result, I dismiss all claims referencing a toilet. Again, I do not accept the landlord's claim for dishwasher repairs given their own CIR evidence states the dishwasher as undamaged. On a separate claim for the gas utility dated September 10, 2016, the landlord fails to prove how the gas utility invoice is attributable to the tenant. Moreover, on review of the landlord's entire evidence I find the landlord's presentation of their damage claims challenging to navigate. The varying contrasts in their evidence, various discrepancies and unconnected nature of the evidence compromises its credibility. I find that for the majority of their damage claims the landlord fails to meet any component of the test for damages set out above. As a result, *except as expressed below* I **dismiss** the landlord's claim for damages.

In respect to the landlord's claim for labour costs totalling \$5400.00 it must be placed into perspective that the 216 hours of labour equate to almost 6 weeks of full time work. The landlord fails to identify to what the labour was attributed over the period of 3 months. I find this portion of their claims does not meet the test for loss. As a result, *except as expressed below* I must largely **dismiss** this portion of the landlord's claim as fatally insufficient.

None the less, I find that the evidence of both parties lends merit to certain portions of the landlord's claim for cleaning, disposal of furnishings and other castoffs of the tenant, as well as disposal of garbage. I further find the landlord has provided sufficient document and photo image evidence the tenant caused some wall and trim damage. I also find the landlord's claim for re-keying locks was unchallenged by the tenant's evidence and on balance of probabilities sufficiently supported by the landlord's evidence. I find it appropriate that in the absence of best evidence I grant the landlord *nominal damages* related to labour / time, wall remedial materials and fuel in recognition of a loss and I grant all the above in the following amounts.

<i>Disposal of tenant's belongings / furniture / refuse</i>	<i>\$ 207.90</i>
<i>cleaning supplies</i>	<i>18.75</i>
<i>housekeeping services</i>	<i>181.13</i>
<i>dumping fees / City of Vancouver</i>	<i>14.00</i>
<i>Rekeying locks</i>	<i>325.50</i>
<i>nominal damages</i>	<i>250.00</i>
<i>total for damages</i>	<i>\$997.28</i>

Claim for loss of rent revenue

In respect to the landlord's claim for loss of revenue I find that Section 45 of the Act states the landlord must receive a written notice in the month before and on the day before the rent due date. In this case, the tenant was obligated to provide the landlord notice they were vacating on or before March 14, 2014. I find the landlord cannot rely on the tenant providing 60 days notice as written in the tenancy agreement as this is not the requirement prescribed by the Act. The tenant claims they provided the required written notice, and the landlord claims the tenant did not. Regardless, the landlord is not claiming a loss of revenue because they could not re-rent the unit for lack of notice. Instead the landlord seeks 3 months rent due to the condition in which the tenants left the unit thereby suffering a loss of revenue. As a result, I find the landlord's claim based on non-compliance with Section 45 of the Act, moot.

I find the landlord's argument the tenant is responsible for the landlord's choice of when and how long they took to rectify the tenant's purported damage is not reasonable and is contrary to the landlord's requirement pursuant to **Section 7(2)** to mitigate their claims. It is not reasonable for the landlord to expect the tenant to compensate them for their choice to slowly address matters. The landlord is responsible to mitigate potential losses of revenue, meaning also in a timely manner. It was available to the landlord to mitigate their loss of revenue, but they did not.

However, I accept that as a result of the tenant leaving the rental unit unclean and with garbage and castoffs for the landlord to deal with the landlord have established an associated loss of revenue for a time following the tenant's move. In this matter I accept one half month to be a reasonable time following the tenancy's end to address the required work toward re-renting the unit. I grant the landlord one half month's rent under the tenancy agreement in the amount of **\$1300.00**.

As the landlord has been in relevant part successful in their application they are entitled to recover their filing fee.

It must be noted that the tenant's evidence states they originally forfeited their security deposit and **Section 39** of the Act operates to allow the landlord to retain the tenant's security deposit if after one year the tenant does not provide the landlord with a forwarding address and the tenant's right to its return is extinguished. I find this to be the case in this matter, and that the security deposit is therefore automatically retained by the landlord and will be off-set from the award made herein. As a result, *calculation for the Monetary Order is as follows:*

Total damages	997.28
Loss of rent revenue	1300.00
Filing fee	100.00
Total award	2397.28
<i>Minus security deposit retained by landlord</i>	<i>-1300.00</i>
Monetary Order to landlord	1097.28

I grant the landlord a Monetary Order pursuant to **Section 67** of the Act in the amount of **\$1097.28**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The original Decision and Order rendered August 04, 2016 are set aside.

The landlord's application in relevant part is granted and the balance dismissed.

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: November 23, 2016

Residential Tenancy Branch