



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN SIMILKAMEEN BRAIN INJURY SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, 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 or pet deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on June 23, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent (the landlord) appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

The landlord had omitted to check the box on their application to be permitted to keep the security and pet deposit; however, the landlord has clearly mentioned their intention

to retain the security deposit in the details of the dispute. As the tenant would have foreknowledge of the landlord's intention I will allow the landlord to amend their application seeking an order to keep the security and pet deposit.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that this tenancy originally started on May 01, 2015 for a fixed term tenancy. At the end of that term the tenant and landlord entered into another fixed term tenancy which started on November 01, 2015 and was due to end on February 29, 2016. The tenant continued on a month to month's basis. Rent for this unit is \$330.00 per month due on the 1st of each month. The tenant paid a security deposit of \$473.00 and a pet deposit of \$300.00 on April 30, 2015.

The landlord testified that at the start of the tenancy the tenant attended a move in condition inspection of the unit. At the end of the tenancy the landlord gave the tenant two opportunities to attend the move out inspection but the tenant did not appear and the move out inspection was done in the tenant's absence. The landlord referred to the inspection reports and photographic evidence throughout her testimony.

The landlord testified that the tenant was served with a One Month Notice to End Tenancy for cause. A hearing was held on April 29, 2016 and an Order of Possession was issued to the landlord on May 31, 2016. The tenant vacated the unit and failed to provide a forwarding address to the landlord. The landlord was able to obtain the tenant's forwarding address through interior health and the tenant's health worker. The tenant did collect his registered mail.

The landlord testified that before the tenant moved into the unit the unit had been renovated and freshly painted. The tenant caused extreme damage to the unit. There were a significant amount of push pin and nail holes in all the walls. These all had to be patched and the unit repainted. The total bill for painting was \$1,008.00; however, the landlord has prorated this based on the useful life of paint being five years and therefore seeks to recover \$806.00 from the tenant.

The landlord testified that they had to do a pre-safety clean of the unit before they could replace the flooring. The tenant had left a significant amount of debris in the unit. As the tenant was a drug user there were also needles and drug paraphernalia mixed in with the debris. The landlord had to get a cleaning contractor in to do this work to remove the debris and the workers had to work slowly to ensure their safety. The contractor's bill for this work was \$200.00 and supplies were \$56.20. The landlord seeks to recover the amount of \$256.20 this from the tenant.

The landlord testified that when the tenant moved into the unit the carpet and linoleum were in good condition. At the end of the tenancy the tenant left the carpet and linoleum in a fifthly condition with many burn marks, stains and cuts. The carpet and linoleum could not be saved and the landlord replaced this with vinyl flooring. Long term this is a cheaper option as it is more hard wearing. The total bill for the replacement flooring is \$4,889.85. The landlord seeks to recover \$2,933.91 from the tenant as the landlord does not expect the tenant to pay the full amount due to depreciation and because the carpet and linoleum were replaced with better quality flooring. The landlord did not provide evidence concerning the age of the carpet and linoleum.

The landlord testified that their maintenance staff had to replace missing blinds and bulbs and repair a damaged toilet flush. Most items could be repaired and just a blind had to be replaced. The landlord seeks to recover \$130.00 for labour and \$56.44 for a missing blind.

The landlord testified that after all the debris had been removed the landlord was able to send in cleaners to do a final clean in the unit. The entire unit was left in a filthy condition including the appliances. Extra precautions had to be made to protect the workers due to any drug paraphernalia found in the unit. The invoice cost for this work was \$450.00. The landlord seeks to recover this amount from the tenant.

The landlord testified that they also had to replace the counter top in the kitchen. The counter had been cut and burnt. The counter top was 18 years old and the landlord understands that a deduction should be made for depreciation. The costs incurred to replace the counter top came to a total of \$535.43. The landlord also seeks to recover \$135.00 for the labour to remove the old counter tops and replace with new ones.

The landlord requests an Order to be permitted to keep the security and pet deposit to offset against their monetary claim. The landlord also seeks to recover the filing fee of \$100.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's undisputed evidence before me.

With regard to the landlord's claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the landlord's claim for damage to the unit and for cleaning the unit. I am satisfied from the undisputed evidence before me, including the condition inspection reports and the landlord's photographic evidence, that the tenant did cause considerable damage in the rental unit to the walls, which required filling and painting, to the flooring with burns, cuts and marks, to the blinds and other minor damage and to the counter top in the kitchen. I also find the unit was left in a complete state of disarray with a great quantity of garbage and personal items left in the unit and that the unit was left in a filthy condition.

I have considered the depreciation of some items based on the information provided by the landlord. Therefore with regard to the painting; I find the cost to repaint the unit was \$1,008.00; the unit had been freshly painted prior to the start of the tenancy. The useful life of interior paint is calculated as five years. Consequently, I award the landlord the amount of **\$756.00** to take into count the depreciation of the interior paint work.

With regard to the landlord's claim for the replacement flooring; I find the landlord has not provided evidence to show the age of the carpet and linoleum to allow me to calculate any depreciation for the useful life of these items. The total cost of the new flooring, which was of a better quality then the old flooring, was \$4,889.85. The landlord has claimed to recover \$2,933.91. However, as I have no basis to decide on the

depreciated value and the useful life of carpet is based as 10 years and as I must make some deduction for a better quality product being installed in the unit, I have awarded the landlord a nominal amount of **\$500.00**.

With regard to the landlord's claim to recover maintenance costs for minor repairs, for fitting blinds and for the replacement cost of the blinds; I award the landlord the amount of **\$186.44**.

With regard to the landlord's claim for the pre-clean and the final clean of the unit. I am satisfied that the tenant failed to clean the unit and remove all garbage. I am also satisfied that some special attention had to be paid in the removal of garbage due to any drug paraphernalia. Under s. 32 of the Act the tenant is required to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and clearly the tenant did not. Consequently, I find in favor of the landlord's claim to recover the cleaning costs incurred to a total amount of **\$706.20**.

With regard to the landlord's claim for a replacement kitchen counter top, the useful life of a counter top is based on 25 years. The landlord testified that this counter top was 18 years old. I therefore must calculate the depreciation of the counter top with a useful life left of only seven years. Consequently, as the cost of the replacement counter top was \$535.45 the landlord is therefore entitled to recover the amount of **\$149.92** for the counter top and **\$135.00** for the labour to replace it.

I Order the landlord to keep the tenant's security and pet deposit in partial satisfaction of the landlord's monetary claim. The landlord may therefore retain **\$773.00** pursuant to s. 38(4)(b) of the Act.

As the landlord's claim has merit I find the landlord may recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Damage to the walls	\$756.00
cleaning	706.20
Carpet and linoleum replacement	\$500.00
Minor repairs and blinds	\$186.44
Counter top and labour	\$284.42
Subtotal	\$2433.06
Plus filing fee	\$100.00
Less security and pet deposit	(-\$773.00)
Total amount due to the landlord	\$1,760.06

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 **\$1,760.06** pursuant to s. 67 of the *Act*. 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: December 16, 2016

Residential Tenancy Branch