



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN NATIONAL RELOCATION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD, FF
Landlord: MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was reconvened pursuant to an Interim Decision joining the parties' applications and is in response to cross-applications by the parties as follows.

The tenant filed their application on June 30, 2016 pursuant to the *Residential Tenancy Act* (the Act), as amended, for Orders as follows:

1. An Order for return of security deposit (\$4625.00) - Section 38
2. An Order to recover the filing fee for this application (\$100.00) - Section 72.

The landlord filed their application on July 05, 2016, un-amended, for Orders as follows;

1. A monetary Order for damage / loss / unpaid rent (\$5525.00) – Section 67
2. An Order to retain the security deposit as setoff – Section 38
3. An Order to recover the filing fee for this application (\$100.00) - Section 72.

Both parties attended the hearing and were given opportunity to discuss and settle their dispute before and during the hearing to no avail. Despite some of the evidence having been submitted later than prescribed by the Rules of Procedure both parties acknowledged receiving all the evidence of the other and each testified they had opportunity to review all the evidence and could respond to it. Therefore all evidence submitted was deemed admissible. Despite their abundance of evidence the parties were apprised only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence and to present witnesses. 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?

Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The tenancy has ended. The relevant evidence in this matter is as follows.

The tenancy began February 14, 2015 as a fixed term tenancy agreement for 16 months of a furnished rental unit. The parties disputed if the fixed term ended on June 13 or 14, 2016. The payable rent was in the amount of \$9250.00 and included all utilities. At the outset of the tenancy the landlord collected a security deposit in the amount of \$4625.00 which the landlord retains in trust. Both parties provided a copy of a tenancy agreement inclusive of a 1 page addendum. The tenant's copy and addendum was signed solely by them one month before commencement of the tenancy. The landlord's copies were absent of signatures.

The parties agree there was a *move in* inspection mutually performed by the parties on February 13, 2015 and recorded on a condition inspection report (CIR). The tenant recalls signing the report with minimal deficiencies ascribed. The parties also reviewed and signed off on a 5 page inventory list. However, the tenant claims they were not provided a copy of these documents during the tenancy.

The tenancy ended June 14, 2016.

The parties have contrasting versions in respect to the *move out* condition inspection they attended. The parties agree the *move out* inspection was performed June 14, 2016, but not together. The parties failed to agree as to why they did not mutually participate in the move out inspection. The tenant claims a CIR was completed by the landlord and left for them to sign on the day they vacated, June 14, 2016. The landlord acknowledged they then attended the unit, and, together with the owner of the unit (PP as witness) made additions to the CIR and reviewed and recorded on the 5 page inventory list. The landlord and the owner signed the inventory list on June 14, 2016 in the absence of the tenant. The owner initialled 6 inclusions on the CIR; however the landlord's signature is absent from the entire CIR. The landlord acknowledged they did not provide the tenant with a completed CIR after June 14, 2016 until recently.

The result of the above is that the parties extensively disagreed in respect to the

condition of the rental unit at the end of the tenancy. The tenant claims the landlord altered the CIR after the tenant signed it and did not inform the tenant. The tenant testified they did not authorize the landlord could withhold any amount from their deposit.

The parties agree the tenant's forwarding address was provided on July 01, 2016.

Tenant's application

The tenant presented their monetary claim. The tenant seeks the return of their deposit and disputes all of the landlord's claims.

Landlord's application

The landlord presented their monetary claim. The landlord seeks compensation for a damaged speaker. The landlord provided that the 1 year old speaker did not function as intended when inspected by the landlord and the owner on June 14, 2016. The landlord provided that an electronics retailer advised the "optical port" was damaged and that replacing the unit was more cost effective than repairing it. The landlord seeks the cost of a new speaker which they claim is in the amount of \$1010.80. The tenant provided that the speaker in question functioned properly during the tenancy and they were not responsible for the landlord's choice to replace it. The landlord provided a photo image of the speaker and the landlord and the owner corroborated in their testimony the speaker did not function. The owner provided that which they were told by the electronics retailer presented with the speaker.

The landlord seeks compensation for over holding of the rental unit by one day in the pro-rated amount of \$308.33. The parties agree the tenant vacated on June 14, 2016. The landlord testified the tenancy agreement they provided the tenant stated the fixed term of the agreement was for 16 months: starting February 14, 2015 and ending June 13, 2016. The landlord testified they did not authorize or agree to a change or amendment of the tenancy end date. The tenant acknowledged they crossed out the fixed term end date of June 13, 2016 and amended the date to June 14, 2016 before signing and returning it to the landlord. The tenant testified they did not hear back from the landlord and did not receive a signed copy of the tenancy agreement back from them.

The landlord seeks unpaid rent in the amount of \$1800.00 in respect to a shortfall in the payable rent of \$150.00 per month for the last 12 months of occupancy (\$12 x \$150.00). The tenant acknowledged the shortfall. They testified the landlord had agreed to a reduction of the rent by \$150.00 as they requested to take over the monthly charges for

the media services to the unit of cable television, internet and telephone, and the landlord had agreed. The tenant provided a brief text exchange in support the landlord agreed to the rent reduction. The landlord agreed there was a short text exchange regarding the media services and the owner's account respecting the services, however, they did not agree to a reduction of the payable rent. The landlord testified they did not authorize or agree to a change or an amendment to the tenancy agreement reflecting a reduction in the payable rent.

The landlord seeks \$1300.00 for cleaning of the rental unit at the end of the tenancy. The landlord and the owner of the unit testified the rental unit was left unclean. The landlord provided a detailed 4 page 'scope of work' document for cleaning the unit by a cleaning service, which they received from the subsequent incoming tenant. The applicant tenant testified that in preparation for the move out inspection the rental unit was cleaned by a cleaning service recommended by the landlord, and furthermore that the same cleaner had attended twice-weekly to clean the unit during the entire tenancy. The tenant provided a letter into evidence from their cleaning service stating that on June 13, 2016 they had cleaned the vacated rental unit over a 7 hour period to a standard, which in their experience with the same landlord, was to the landlord's expectations. The landlord highlighted a series of photo images submitted which they claim supports a need for cleaning. The tenant argued the photographs were not dated and did not depict the condition of the unit at the end of the tenancy.

The landlord seeks compensation for certain repairs to the unit in the amount of \$765.00 for which the landlord provided an invoice for miscellaneous small repairs including painting 4 walls, re-caulking the shower, replacing bulbs and a ballast, cleaning grout, scratch removal to furniture. The tenant provided that most of the items listed by the landlord were not identified on the CIR as they signed, other than for some repair and repainting of molding, and several bulb replacements.

The landlord seeks compensation to the limit of their monetary claim of 16 days of lost rent revenue ($\$9250.00 / 30 \times 16$ days) due to delayed possession by the incoming tenant for the period June 15, 2016 to July 02, 2016. The landlord testified the rental unit had to be cleaned to the incoming tenant's standard and miscellaneous repairs completed.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications referenced herein are available at www.gov.bc.ca/landlordtenant.

The onus is on the respective parties to prove their claim on balance of probabilities. On preponderance of all the relevant evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

It must be noted that a tenant's security deposit always remains as the tenant's in trust with the landlord and it must be or will be returned to the tenant unless the landlord is authorized to retain any of it through permission of the tenant or the dispute resolution process.

Sections 24 and 36 of the Act and the **Act Regulation** in respect to the *move in* and *move out* condition inspection requirements of the Act state that a landlord's right to claim against a security deposit **for damage to residential property** is extinguished if the landlord does not comply with either sections of the Act. I find that the landlord's right to claim against the security deposit for **other than damage** is not extinguished provided they do so within the time prescribed by **Section 38(1)** of the Act. In this matter I find that the landlord did not aptly comply with Sections 23 and 35 of the Act. None the less, I find the landlord filed against the deposit for matters other than damage and made their application within 15 days of receiving the tenant's forwarding address.

Landlord's claim

Under the Act, a party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by **Section 7** of the Act, which states;

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.*

(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.*

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord

must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find that **Part 3 of the Residential Tenancy Act Regulation – Condition Inspections**, as well as the corresponding sections of the Act, prescribe the requirements enabling reliability of condition inspections for the benefit of the parties. The resulting regulation states as follows.

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contra

I accept the evidence of the parties that neither of them mutually (together) participated in the *move out* inspection as required by the Act and Regulation respecting condition inspections. I find the CIR is absent of the landlord's required signatures. I find the move out CIR contains too many inclusions placed in the CIR without the tenant's presence or their knowledge. Therefore, I find that the landlord cannot rely on the *move out* portion of the CIR to support their claims. I do not find the inclusions by the landlord's *witness* (PP) to the CIR add reliability to the CIR.

With or without consideration of the CIR the landlord has not provided sufficient evidence in respect to their claim of a damaged speaker allowing an Arbitrator to determine if the claimed loss is valid or has been reasonably mitigated. As a result I must dismiss this portion of their claim.

I find that the *standard terms* of a tenancy agreement, such as the dates defining the length or term of a fixed term tenancy, or the amount of rent payable cannot be changed or amended without the mutual agreement of both parties, in writing. I find that the landlord did not authorize a change or amendment to the tenancy end date or the payable amount for the rent. As a result, I find the landlord is entitled to the unpaid rent for the 12 months in which the tenant deducted \$150.00 per month, in the aggregate sum of **\$1800.00**. I also find that the tenant over held the rental unit by one day. As a result I find the landlord is entitled to an amount for over holding the rental unit equivalent to the prorated amount of the monthly rent of **\$308.33**.

It must be noted that the landlord's CIR is near silent on the state of cleanliness of the unit. I find the landlord's "scope of work" document for cleaning, sourced by their incoming tenant, describes a deep cleaning proposition, which while desirable to an

incoming tenant is extravagant to meet the requirement of the Act. I find the landlord's photo images are not helpful in depicting the landlord's "scope of work" for cleaning. I prefer the evidence of the tenant that they contracted a cleaner for 7 hours to clean the unit to a standard. I find the landlord has not provided sufficient evidence the tenant left the rental unit less than *reasonably clean*, as required by **Section 37(2)** of the Act. As a result I must dismiss this portion of the landlord's claim.

In the absence of a reliable CIR I find the landlord's photo images are not helpful in respect to verifying the landlord's claims respecting damage. I find the landlord has not provided sufficient evidence respecting their claim for needed repairs. None the less, I accept the tenant's evidence they were responsible for some damage and some repairs were warranted to baseboards and other items of which their condition were beyond reasonable wear and tear: damaged. As a result, I grant the landlord set compensation for miscellaneous repairs in the amount of **\$300.00**.

I find there is insufficient evidence to support the landlord's claim for loss of revenue for 16 days due to conduct or neglect of the tenant. Additionally the landlord has not provided evidence of what efforts they made to reasonably mitigate this claimed loss. However, having found the tenant responsible for nominal damage, I grant the landlord nominal compensation as lost revenue equivalent to the value for 2 days of rent under the agreement in the prorated amount of **\$716.66** (308.33 x 2).

Therefore, calculation is as follows. The security deposit will be off-set from the award made herein.

landlord's award – over holding	308.33
landlord's award – unpaid rent	1800.00
landlord's award – repairs	300.00
landlord's award – loss of revenue	716.66
total landlord's award	\$ 3124.99
<i>Minus / off-set: tenant's security deposit</i>	<i>- 4625.00</i>
<i>Monetary Order to tenant</i>	<i>(\$1500.01)</i>

As both parties were fractionally successful in their applications they are equally entitled to their filing fees which cancel out.

I Order the landlord may retain \$3124.99 of the tenant's security deposit and must return the balance of \$1500.01, forthwith.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$1500.01**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The parties' respective applications in relevant part have been granted.

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: January 18, 2017

Residential Tenancy Branch