Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

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

Introduction

This hearing was reconvened pursuant to un-amended cross-applications by the parties as follows.

The tenant filed their application on July 22, 2016 pursuant to the *Residential Tenancy Act* (the Act), as amended, for Orders as follows:

1. An Order for return of double their security deposit and pet damage deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72

The landlord filed their application on August 07, 2016 for Orders as follows;

1. A monetary Order for damage / loss - 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 - 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. 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. All evidence submitted was deemed admissible. 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 from the tenant's deposits?
Is the tenant entitled to the return of their deposits?

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 August 15, 2013 and ended June 30, 2016. The payable monthly rent was in the amount of $1550.00. The landlord provided a copy of a tenancy agreement. The agreement reflects that at the outset of the tenancy the landlord collected a security deposit in the amount of $775.00 and a pet damage deposit in the amount of $750.00 for a total of $1525.00 of which the landlord retains both deposits in trust.

The parties agree there was a *move in* inspection mutually performed by the parties on August 15, 2013 and recorded on a condition inspection report (CIR). Both parties signed the report with minimal deficiencies ascribed. The tenant testified they were provided a copy of the move in CIR. The tenancy ended June 30, 2016 on which day the tenant removed all their possessions.

The parties have contrasting versions in respect to the *move out* condition inspection. The parties agree the *move out* inspection time of June 30, 2016 was attended by both parties. The landlord claims the tenant had already returned the unit key before the appointed time on June 30, 2016. The landlord described the inspection time as "informal". They testified the attending representative for the landlord, KA, inspected the unit and noted deficiencies in the cleanliness of the unit and the condition of living room floor and informed the tenant. The landlord claims they left the tenant to remedy the unit and communicated they would return when they had time to check the unit again and complete the inspection. KA reportedly returned July 01, 2016 and called the tenant without success in contacting them. They noted that none of the deficiencies identified the previous day had been attended, therefore conducted the inspection without the tenant and completed the CIR and signed it. At this juncture the landlord claims not having the tenant's forwarding address to mail the tenant a copy of the CIR. The landlord provided a letter from KA outlining their version of events.

The tenant testified they cleaned the unit and left it undamaged other than normal wear and tear to the unit. They testified the landlord did not contact them after June 30, 2016 and that after the long weekend of July 01, 2016 their mother personally provided the landlord's office with their key to the unit and their forwarding address on July 04, 2016. The tenant provided a note signed by their mother stating they delivered the unit key and the tenant's forwarding address to the front desk at the landlord's office and were told it would be placed in the tenant's file.

The landlord reiterated the tenant had already returned the key on June 30, 2016; and, they claim they first received the tenant's forwarding address upon receiving the tenant's application for dispute resolution in late July / early August 2016. Upon having the tenant's forwarding address the landlord immediately filed for dispute resolution against the deposits.

The testimony of both parties is that the tenant called the landlord's office on July 20, 2016 to discuss return of the deposits and as to the noted deficiencies. The landlord testified the tenant was told that they had not yet received all of the invoices to determine the administration of the deposits.

The landlord claims the tenant left the unit unclean for which they expended $126.00 for cleaning supported by an invoice dated July 10, 2016. The landlord claims the tenant left behind a "pool" for which they expended $63.00 for its removal supported by an invoice dated July 14, 2016. The landlord claims the tenant left the unit damaged, by way of a compromised living room linoleum floor and a missing glass panel from the storm door for which they expended $246.57 and $62.72 respectively supported by invoices dated July 26 and 28, 2016, respectively. The tenant agrees with the landlord's claims for cleaning and 'pool' disposal in the sum amount of $189.00. The tenant disputes the claimed linoleum floor damage as normal wear and tear. The tenant disputes the claimed storm door glass damage as missing from the outset of the tenancy and verbally acknowledged by the landlord at the start of the tenancy.

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 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 certain either sections of the Act. In this matter I find that the landlord did not aptly comply with **Sections 35(2)** of the Act. I find the landlord, having made an appointment with the tenant for June 30, 2016 did not mutually inspect and complete the inspection with the tenant on that date as was arranged, but rather the landlord testified that inspection was *informal*. The landlord's evidence upon which they want reliance is the letter by KA. Their letter does not state they called the tenant to conduct a newly reconvened *formal* mutual inspection on July 01, 2016. Rather, it states the landlord returned to the house July 01, 2016 and proceeded to conduct the inspection without benefit of the tenant, including the CIR. I find the tenant was not provided opportunity for input into the actual condition inspection of July 01, 2016, upon which the landlord seeks reliance. And, I have not been presented with evidence the tenant was provided a second opportunity for an inspection as prescribed by **Section 35(2)** of the Act and the corresponding Regulations. I find that **Section 36(2)** of the Act states the right of a landlord to claim against the deposits is *extinguished* if they do not comply with Section **35(2).** I find it is moot whether the landlord received the tenant's forwarding address on July 04, 2016 or later. Not being entitled to claim against the deposits pursuant to **Section 36(2)** the landlord was obligated to simply return the deposits in their entirety within 15 days upon receiving the tenant's forwarding address. However, instead the landlord filed for dispute resolution and retained all of the tenant's deposits.

It must be noted that after returning the deposits it remained available to the landlord to separately apply for *damages* to the unit.

As a result of the above, I find the tenant is entitled to compensation of *double* their deposits as prescribed by **Section 38** of the Act in the amount of **$3050.00.**

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

The parties argued at length as to the reliability of the CIR. I find the parties were in agreement as to the move in portion of the CIR. Therefore I accept and find the *move in* portion of the CIR does not identify a deficiency with the storm door; and, identifies that the living room linoleum floor was *new* at the outset of the tenancy. As a result, I accept the landlord's claim that at the end of the tenancy the storm door was missing a glass panel and they are entitled to compensation for its replacement in the amount of $62.72.

I find that **Residential Tenancy Policy Guideline #37** deems the useful life of linoleum flooring as considerably greater than 3 years, as opposed to the tenant's assertion the compromised flooring was the result of reasonable wear and tear. I prefer the landlord's evidence, and find they are owed $246.57 for repair to the flooring. I find the landlord sufficiently meets the test established by Section 7 of the Act. The tenant agreed to the balance of the landlord's claim. As a result of the above I find the landlord is entitled to their entire request on application totaling **$498.29.**

Therefore, calculation is as follows.

tenant's award	*$3050.00*
minus landlord's award	-$498.29
Monetary Order to tenant	**$2551.71**

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

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$2551.71.** 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 31, 2017

Residential Tenancy Branch