



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was convened in response to cross-applications by the parties.

The tenant filed their application on June 29, 2016 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

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

The landlord filed on November 04, 2016 for Orders as follows;

1. A monetary Order for damage / loss – Section 67
2. A monetary Order for unpaid utilities – Section 67
3. An Order to retain the security deposit – Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. Despite their 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 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 undisputed evidence in this matter is as follows. The tenancy began March 01, 2012. The payable rent was in the amount of \$1230.00. Pro-rated utilities of 40% were a separate responsibility of the tenant.

At the outset of the tenancy the landlord collected a security deposit in the amount of \$600.00 which the landlord deducted and sent the tenant a balance of \$22.61 in mid-April 2016. The parties agree there was a cursory *move in* inspection however no condition inspection was recorded and a condition inspection report (CIR) was not completed.

The tenancy ended March 31, 2016. At the end of the tenancy there was no mutual *move out* condition inspection conducted and no CIR was completed. The parties agreed that 5 days before the end of the tenancy the parties conducted a cursory 'pre-inspection' at the request of the landlord in anticipation the landlord would be unable to conduct an inspection at the end of the tenancy because of work commitments. The landlord testified they did not attend to inspect the unit at the end of the tenancy. The landlord testified that at that time of the 'pre-inspection' the rental unit did not appear damages and they did not ascertain deficiencies although the tenant informed the landlord of an issue in respect to possible mold behind the shower wall which could not be assessed until after the tenancy ended.

The parties agree that at their request the landlord received the tenant's forwarding address by text message on April 02, 2016 so as they could return the security deposit. The parties agreed the tenant informed the landlord at the end of the tenancy they would be responsible for residual utilities charges to the end of the tenancy and that these charges could be deducted from the security deposit. The tenant testified in the hearing the landlord is owed residual utilities in the amount of \$175.49.

The disputed evidence is as follows. The tenant disputes the landlord's evidence stating the tenant informed and authorized the landlord to deduct the security deposit by an amount for any damages found, and confirmed they solely agreed the landlord could deduct residual utilities charges from the security deposit. The parties do not agree respecting the landlord's claims the tenant is responsible for mold damage, plumbing and wall repairs and costs for replacing the shower stall unit.

Tenant's application

The tenant seeks the return of their deposit and compensation pursuant to Section 38 of the Act of double the security deposit.

Landlord's application

The landlord seeks costs for residual utilities of \$175.49, plumbing and mold removal and associated repairs in the amount of \$414.75 and replacement of the bathroom shower unit and installation in the amount of \$957.76. The tenant agreed the landlord is owed for the utilities of 175.49.

The landlord provided that after the tenancy ended they employed the same contractor responsible for renovating and installing the bathroom accoutrements 5 years earlier to inspect the claimed mold issue. The landlord provided a written accounting that their contractor came upon water damage and mold in the bedroom closet backing onto the bathroom / shower. The contractor determined the shower head pipe protruding from within the wall plumbing had been unscrewed compromising the seal between the 2 pipes and that water ran down the wall when the shower was turned on. In their written assessment the contractor also determined that the shower ceiling above the shower head was marked and indented and appeared to have been done by the shower head when purportedly twisted off. The contractor determined that the loosened shower pipe was intentional and resulted in damage. The contractor was adamant the damage was not reasonable wear and tear. The tenant denied doing anything to the shower plumbing to cause the claimed damage or that they made attempts to alter the shower head or shower pipe. The tenant did not provide testimony in respect to the ceiling above the shower head.

The landlord provided written evidence by their contractor stating they determined that the tempered glass shower stall door handle was off the door and purportedly pulled off and could not be repaired. As well the 2 grommet holes for the handle showed some cracking around the holes. The landlord provided a photo image of the portion of the glass door at the handle holes. The contractor determined in their written assessment that the glass door took some force and stated it was remarkable the glass did not shatter. The photo image of the glass door holes depicts the 2 holes as being chipped around the holes. The contractor claims the door at risk of further deterioration with a likelihood of shattering if not replaced. He recommended replacing the glass door as in their determination it was unsafe. The door alone could not be sourced and a new shower kit which included a new door and handle was recommended and installed. The contractor surmised the shower door had been intentionally broken off. The tenant denied doing anything to the shower door to cause the claimed damage or that they did anything out of the ordinary to cause the handle to come off. The landlord testified the shower door handle was affixed to the door during their 'pre-inspection' March 26, 2016.

The landlord provided invoices for their monetary claims.

The landlord further provided the above referenced contractor as a witness. The witness was affirmed to solely provide the truth.

Witness MT – contractor

The witness testified they are experienced in construction and plumbing and confirmed that 5 years earlier they personally renovated and equipped the bathroom of the rental unit. They assessed the deficiencies the landlord has claimed as damage by the tenant. The witness recounted they found the shower pipe unwound behind the shower wall and noticed the ceiling above the shower head marked and scraped and that it aligned with the shower head. The testified they determined the loosened shower pipe as the source of water resulting in pooled water at ground and further resulting in mold. The witness

testified that in their opinion the shower pipe could not possibly have come unravelled through reasonable wear and tear. The witness testified they could not ascertain when the purported damage occurred.

The witness recounted they found the tempered glass shower door handle broken off from the shower door and the area around the handle holes chipped. The witness testified that in their opinion the “handle just came off”, and “had to have been removed with force”. The witness testified they could not ascertain when the shower door handle became separated but had to have been forcibly removed.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at [**www.gov.bc.ca/landlordtenant**](http://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

1). **Sections 24 and 36** of the Act in respect to the *move in* and *move out* condition inspection requirements of the Act state as follows.

Consequences for tenant and landlord if report requirements not met

- 24** (2) The right of a 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 23 (3) [*2 opportunities for inspection*],
 - (b) having complied with section 23 (3), does not participate on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

- 36** (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.

2). **Section 38** of the Act in relevant parts provides as follows in respect to the administration of tenant deposits.

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

and

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In respect to the foregoing portions of the Act the evidence is that the landlord did not complete condition inspection reports in concert with the Act and therefore their right to claim against the deposit were *extinguished*. The landlord was precluded from making a claim to retain the deposit for damage to the unit; and therefore was obligated to simply return the deposit of \$600.00 within the required time of 15 days after the tenancy ended. It must be known that despite returning the deposit it remained available to the landlord to file an application for

damage or loss arising out of the tenancy, including damage to the unit and utilities, which the landlord ultimately did by their application. Therefore I find the tenant is entitled to double the security deposit in the amount of \$1200.00 from which I reduce the amount returned to the tenant by the landlord of \$22.61, for an award of **\$1177.39**.

Landlord's claim

The parties agree the landlord is owed utilities of **\$175.49** and this amount is factored in calculations.

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.

On a balance of probabilities I prefer the landlord's evidence in respect to the water damage to the unit. I find that solely the tenant could have caused the shower pipe to be loosened causing the water damage and resulting repairs. I find the landlord could not have mitigated the resulting cost for the repairs. I grant the landlord the claimed amount for this portion of their claim in the amount of **\$414.75**.

On a balance of probabilities I prefer the landlord's evidence in respect to the compromised glass shower door. I find that the described condition of the glass door and the broken handle as beyond reasonable wear and tear therefore damage. I find that solely the tenant could have caused the damage. I find the landlord has not mitigated their claim by a calculation to account for depreciation of the original shower kit. **Residential Tenancy Policy Guideline 37** itemizes the **useful life of work done or things purchased** to aid in calculations of loss. In this matter the Guideline does not specifically address glass shower doors. However, in a comparison of near-equivalent items and daily usage of the item I find that glass shower doors as having a useful life of 15 years. The evidence is that the shower door kit was 5 years old. As a result, I

grant the landlord 2/3 or 66.66% of their claim for replacement of the glass door kit in the amount of **\$638.50**.

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

Calculation for Monetary Order:

landlord's award - utilities	\$175.49
landlord's award - water / wall damage	414.75
landlord's award - glass shower door kit - mitigated	638.50
<i>tenant's award - double security deposit less return</i>	<i>- 1177.39</i>
<i>Monetary Order to landlord</i>	\$ 51.35

I Order the landlord may retain the tenant's security deposit and **I grant** the landlord a **Monetary Order** under Section 67 of the Act in the amount of **\$51.35**. 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 09, 2017

Residential Tenancy Branch