



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0937822 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD FF

Introduction

This proceeding was convened in response an application by the landlord filed August 08, 2016 for Orders as follows;

1. An Order to retain a portion of the security deposit in satisfaction of their monetary claim - Section 38
2. 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, to no avail. The tenant acknowledged receiving all the evidence of the landlord and testified they had reviewed all the evidence and could respond to it. Therefore all evidence submitted by the landlord was deemed admissible. The tenant acknowledged not submitting evidence of their own. The parties had 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.

The landlord was permitted to fax 2 receipts immediately after the hearing which had previously been provided to the tenant and sent to this hearing however not received for this proceeding.

Preliminary matters

The tenant provided having filed a late application for dispute resolution 4 days before the hearing date (February 02, 2017) requesting the return of their security deposit. The tenant's application has been assigned a future hearing date and they requested the matter be crossed with this proceeding. The landlord had not been served with the

tenant's application and the tenant testified they had not submitted any evidence for their application. I determined the application was further filed considerably later than permitted by the Rules of Procedure and unfair to the landlord's ability to respond. The tenant's application was denied. The parties were informed there was capacity for both applications to be resolved by this proceeding.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed from the security deposit?

Background and Evidence

The relevant evidence in this matter is as follows. The rental unit is a house. The tenancy began November 05, 2015 and ended August 01, 2016. The payable monthly rent was in the amount of \$2800.00. The hearing did not have benefit of a written tenancy agreement. The parties agreed that at the outset of the tenancy the landlord of the day collected a security deposit in the amount of \$1400.00 which the applicant landlord received by way of the *statement of adjustments* upon their purchase of the unit; and, which they retain in trust in its entirety.

The tenant confirmed there was a *move in* inspection mutually performed by the tenant and the landlord of the day however it was not recorded on a condition inspection report (CIR). The tenancy ended August 01, 2016 on which day the tenant had removed all their possessions and the parties conducted a mutual condition inspection of the rental unit, however the landlord confirmed the inspection was not recorded on a CIR. The parties agreed there was no agreement for the landlord to retain any of the deposit. The landlord submitted undisputed evidence from the tenant dated August 05, 2016 in which the tenant requests the return of their security deposit in full and provides their forwarding address. The landlord acted on the tenant's forwarding address and within days applied against the deposit.

The landlord provided an abundance of photo image evidence depicting the condition of the rental unit upon being vacated. The landlord submitted the rental unit was left unclean as depicted by their photo images of the state of the carpeting and perimeter of the unit as well as the appliances of the unit. The landlord characterizes their pecuniary loss is for remedying the tenant's failing to return the rental unit to the landlord in a reasonably clean state as required by **Section 37** of the Act. The landlord was clear their claim corresponds to the tenant's neglect of their "*essential responsibilities*" to clean the unit at the end of the tenancy as expressed by Residential Tenancy Policy Guideline 1.

The landlord's images evidence show the presence of debris on the carpeting and soiling/dust at the perimeters as well as a quantum of what the landlord describes as paint staining and paint residue. The landlord's images also depict the stove/oven of the unit with adhered residue, and the refrigerator with debris on shelves and compartments. The tenant did not dispute the photo images and testified the images depicted the condition of the rental unit at the end of the tenancy. The tenant agreed with the landlord's claim for general cleaning in the amount of \$280.89, however disputed the landlord's claim for carpet cleaning in the near same amount of \$280.88. The tenant argued when they moved in the unit was disorderly with certain deficiencies which garnered a rent reduction from the landlord of the day. The tenant testified they determined that as a result they were justified to surrender the unit in a state comparable to how they encountered it. The tenant was reminded they accepted a rent reduction for any failings at the outset of the tenancy.

The landlord further claims \$190.00 for lawn cutting. The landlord provided photo images of the lawn at the end of the tenancy which the landlord described as overgrown, and which they claim the maintenance for the lawn was the responsibility of the tenant. The tenant argued that from the outset of the tenancy the original landlord provided lawn maintenance; and, that lawn maintenance was not articulated as a responsibility of the tenant within the tenancy agreement. The landlord testified they were not aware of the tenancy agreement particulars but relied on a generalization within Residential Tenancy Policy Guidelines as to the responsibility for lawn maintenance in tenancies such as the tenancy in dispute. The landlord provided verification in respect to their claim for lawn cutting in the amount of \$190.00.

Analysis

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

An applicant bears the burden of proving their claims on the balance of probabilities. On preponderance of all the relevant evidence I find as follows.

It must be noted that a security deposit always belongs to a tenant and remains in trust with the landlord for the duration of the tenancy; and must be returned to the tenant unless the landlord is authorized to retain any of it through mutual agreement or the Order of an Arbitrator.

I accept the landlord's characterization their monetary claim results from what they term the tenant's neglect of their "essential responsibilities". Regardless, the landlord's claim is not for unpaid rent, unpaid utilities or similar unsatisfied debt owed the landlord under

the tenancy agreement. The landlord's claim is effectively for the pecuniary loss associated with remedying the claimed unclean state of the unit: damage or loss.

Sections 24 and 36 of the Act and corresponding Act Regulation in respect to the *move in* and *move out* condition inspection requirements 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 the condition inspection report requirements of the Act. The evidence is that the landlord did not comply with **Sections 35(2)(c)** of the Act. I find that having made an inspection with the tenant the landlord did not complete the condition inspection report and give the tenant a copy of it in accordance with the Regulations. I find the Act states the right of a landlord to make a claim against the deposit is *extinguished* if they do not comply with this requirement. Unable to claim against the security deposit the landlord was obligated to repay the deposit within 15 days of receiving the tenant's forwarding address. Instead the landlord retained the tenant's deposit and filed for dispute resolution. It must be noted that in respect to the above, after returning a deposit it still remains available to a landlord to subsequently apply for damages or loss if the parties cannot achieve a mutual resolve.

Despite the landlord's claim against the security deposit I accept the landlord's application in respect to damage and loss (MNDC). I find that under the Act, a party claiming any loss bears the burden of proof. Moreover, an applicant must satisfy the test established within **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 tenant. 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 reflection, of all the above, I find it was available to the tenant to provide sufficient evidence countering the landlord's claim in respect to lawn maintenance. In the absence of sufficient evidence to the contrary I find I prefer the landlord's Policy Guideline evidence addressing a tenant's responsibility for lawn cutting in respect to this type of tenancy. As a result I find it reasonable, on balance of probabilities; the tenant was responsible for lawn cutting during the tenancy. As further result, I grant the landlord their claim for lawn cutting in the amount of **\$190.00**.

I find the landlord has provided sufficient evidence the tenant left the rental unit unclean, inclusive of the rental unit carpeting and appliances, for which the landlord provided evidence they expended a sum of \$561.77 to clean the unit. I find the evidence is that the rental unit was not left reasonably clean so as a new occupant could seamlessly move in. As a result I grant the landlord their claimed amount for cleaning of **\$561.77**.

As the landlord has been successful in their application they are entitled to recover their filing fee of **\$100.00**.

Residential Tenancy Policy Guideline #17, in relevant part states as follows, (emphasis mine)

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit, **or***
- *a tenant's application for the return of the deposit*

*unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, **as applicable, whether or not the tenant has applied for arbitration for its return.***

Having found the landlord's right to make a claim against the deposit *extinguished* pursuant to **Section 36** and the security deposit not returned within the required time to do so pursuant to **Section 38**, I find the tenant is entitled to double their deposit as prescribed in the amount of \$2800.00. The tenant's entitlement will be offset by the landlord's award herein. Calculation for the Monetary Order is as follows.

tenant's security deposit x 2	\$2800.00
Landlord's award - lawn cutting	- \$190.00
landlord's award - cleaning	- \$561.77
landlord's filing fee	- \$100.00
<i>Monetary Order to tenant</i>	\$ 1948.23

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$1948.23**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in relevant part has 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: February 14, 2017

Residential Tenancy Branch