



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, FF

Tenants' application: MNDC, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord attended with her sister and the tenants called in and participated in the hearing. The parties exchanged documentary evidence before the hearing. The landlord applied on July 22, 2016 for a monetary award and an order to retain the security deposit. The tenants applied on November 13, 2016 for a monetary award and for the return of their security deposit. The landlord submitted an amended application on January 6, 2017, whereby she increased the amount of her monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenants' security deposit?

Are the tenants entitled to the return of their security deposit, pet deposit and key deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began July 18, 2015 for a one year term ending July 18, 2016. The monthly rent was \$2,450.00, payable on 30th day of each month. The tenants paid a security deposit of \$1,025.00, a pet deposit of \$700.00 and a key deposit totalling \$300.00 for two sets of keys. The tenants moved out at the end of the fixed term on July 18, 2016. The landlord testified that the tenants failed to give proper written notice. The landlord said that the tenants refused to return keys until they received back the security deposit. The landlord

testified that the rental unit was not returned in presentable condition and she had to hire people to perform cleaning and repairs. She also had to hire a locksmith to change the locks. The floors were so badly damaged they had to be replaced. The landlord said that the tenants were responsible for water damage to the floors that caused the laminate floor to lift and separate.

The landlord claimed the following amounts:

- Loss of rent: \$2,450.00
- Key replacement: \$84.00
- Floor replacement: \$2,992.50
- Carpet cleaning: \$200.00
- General cleaning: \$240.00

Total: \$5,966.50

The landlord submitted photographs of the interior of the rental unit, specifically pictures of what was alleged to be the floor damage caused by the tenants. The pictures showed that the seams between the floor planks had separated and lifted in places. The landlord submitted several close-up photographs that showed the lifting corners of individual floor planks. The landlord submitted copies of several estimates for the floor replacement. She said that she chose the cheapest of the three estimates. The landlord said that the flooring companies who provided the estimates said the damage was apparent water damage. The landlord attributed it to damage cause by the tenants' dog or a large water spill. The landlord submitted a receipt dated August 23, 2016 for the sum of \$2,992.50 paid for the new flooring. She submitted copies of receipts for the other claimed expenses. The landlord submitted a copy of a condition inspection report completed at the beginning of the tenancy. She referred to the report in support of her evidence that there was no pre-existing floor damage.

In the tenants' application filed on November 13, 2016, they requested the return of all deposits that were retained by the landlord at the end of the tenancy. The tenants disputed each one of the landlord's claims. The tenants noted that the landlord refused to provide any address for service. There was no address for the landlord on the tenancy agreement and the landlord refused the tenants' repeated requests for an address. Despite the tenants' expressed concerns about the ownership of the rental unit, the landlord provided only her cell phone number as a means of contact and she refused to show identity documents to the tenant. The tenant said that the landlord insisted that the tenancy be for a fixed term of one year, ending on July 18, 2016.

Although the tenants requested at the time of signing that it be allowed to continue on a month to month basis after the end of the term, the landlord said that she would only accept one year agreements. The tenancy agreement was written on the standard form provided by the Residential Tenancy Branch and the form was not completed to indicate whether the tenants must move out at the end of the term. The address given for the landlord was the address of the rental unit.

The tenant testified that the condition inspection report noted a list of necessary repairs to be completed at the start of the tenancy. The list stated:

Mud patches to be sanded and painted, auto blinds to be fixed toilet upstairs to be fixed cover of cabinet near sink to be fixed in kitchen.

The tenant said that only glaring defects and needed repairs were listed on the condition inspection report. He said that the unit had a lot of wear and tear from use as a high traffic rental unit. In his written statement he noted as follows:

There were hundreds of mud patches and dents in the walls around the unit; all walls were due to be repainted; there was wear-and-tear areas of the floors (small dents, floorboards conjoining slightly uneven); the 20ft tall blinds which provide privacy to the entire unit were stuck up and broken leaving the entire suite visible to the busy street in front of the suite; there was damage to the kitchen cabinets; and the entire suite was in disgusting condition.

The tenant testified that it took more than two months to have the blind fixed, leaving the whole of the rental unit, including the tenants' bedroom visible to passersby on the busy street outside the unit.

The tenant disputed the landlord's testimony about lack of notice to end the tenancy. The tenant sent text messages to the landlord informing her of the tenants' intention to move. He sent a message to the landlord dated June 3, 2016, which was a month and a half before the end of the tenancy. The tenant was unable to provide any other form of notice because the landlord refused to provide the tenants with a mailing address and all his dealings with the landlord were conducted by text message. The landlord acknowledged receiving the tenant's text message and they had a phone conversation on June 7th to discuss the move out date. The landlord made no arrangements to receive a written notice. The tenant said that the landlord asked if the tenants could stay until the end of July, but the tenants were unable to accommodate her request.

The tenant said that the keys were returned to the landlord. The Landlord was present at the unit with a friend, N.L. There was no move-out inspection recorded. The tenant did request the return of the deposits at the time of the move-out because the landlord refused to provide a mailing address and also refused to show the tenants any photo identification to verify her identity. There were two sets of keys and they were left at the rental property by the tenants after the tenancy ended. The tenant said that the landlord told him before he moved out that that she was going to change the locks because she was required to do so by the *Residential Tenancy Act*.

The tenant received an address for the landlord after she filed her application for dispute resolution. The tenants filed their application for dispute resolution on November 13, 2016. They sent the application and Notice of Hearing to the landlord by registered mail on November 17, 2016. Notice cards were left indicating where the mail could be picked up. It was not picked up and was eventually returned to the tenant. The landlord said she did not receive the tenants' application.

Analysis

The landlord claimed that the tenants failed to give proper written notice and claimed loss of rental income due to the lack of notice and need for repairs. I find that the landlord's claim that the tenants failed to give proper notice is without merit. The landlord did receive notice by text and acknowledged it. The landlord failed and refused to provide proper contact information and a mailing address. The tenants used the only means of contact available to them. Further the tenancy was for a fixed term at the insistence of the landlord. The agreement did not specify that the tenancy would continue on a month to month basis so, arguably there was no obligation upon the tenants to give notice in any event. I find that the tenants did give effective notice by text more than one month before the end of tenancy and that it was acknowledged and accepted by the landlord.

The landlord claimed that the tenants caused damage to the laminate floor that required its replacement. I find that the landlord has failed to prove that claim on a balance of probabilities. The floor was not explicitly dealt with on the move-in inspection, but I accept the tenant's testimony that the initial inspection was taken up with a listing of all the repairs and painting work needed to make the unit suitable for occupancy by the tenants. The landlord submitted photographs of the flooring; they were taken in a manner intended to highlight and accentuate the flaws. The landlord claimed that the floor suffered water damage caused by the tenants. She relied on the flooring estimates as evidence to support her claim. The estimates referred to water damaged floors, but there is no indication whether that was based on a finding by the estimator or

that it was based on information supplied by the landlord. The estimates do not qualify as expert reports and I find that they do not constitute valid evidence of causation. The landlord did not supply evidence to establish the age of the floors, but she did not disagree with the tenant's testimony that the unit has been rented to tenants for several years before this tenancy began. I find that the landlord has not proved that the tenants caused water damage to the laminate flooring or that the condition of the floor exceeded normal wear and tear at the end of the tenancy. The landlord did not provide evidence with respect to the quality, age or life expectancy of the flooring and I find it more probable that the flooring had to be replaced because it was reaching the end of its useful life after multiple tenancies.

The landlord has not provided sufficient evidence to establish that the tenants are responsible for cleaning or carpet cleaning expenses. The tenants said the unit was left acceptably clean and their evidence is that the unit was in poor shape when the tenancy started; this is borne out by the condition inspection report and the tenants' evidence about repairs needed when the tenancy began. I find that the landlord is not entitled to an award for loss of rental income in any amount.

I do find that the tenants are responsible for the cost of replacing keys in the amount of \$84.00 because, on the evidence provided, they failed to return the keys until well after the tenancy ended. I allow the landlord's claim in the amount of \$84.00 and the remainder of the landlord's claims are dismissed without leave to reapply. Because the landlord was largely unsuccessful in her application I do not award the landlord the recovery of the filing fee for her application.

With respect to the tenants' application, the application itself was unnecessary because the tenants could have supplied all of their evidence in reply to the landlord's claim without the need to file a separate application since they were not seeking any compensation apart from the return of their deposit amounts.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. 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.

In this application the landlord requested the retention of the security deposits in partial satisfaction of her monetary claim. I order that the landlord retain the sum of \$84.00 from the deposits that she holds in full and final satisfaction of the award in her favour. All other claims by the landlord are dismissed without leave to reapply. Because the tenants' claim was unnecessary I decline to award the tenants the filing fee for their application. I grant the tenants a monetary order for the balance of their security deposit, pet deposit and key deposit in the amount of \$1,941.00, being the deposits of \$2,025.00 less the award of \$84.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord has been awarded the sum of \$84.00. The tenants have been granted a monetary order for the return of their deposits in the amount of \$1,941.00

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 17, 2017

Residential Tenancy Branch