Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was reconvened in response to cross applications by the parties as follows. The landlord filed their application on September 09, 2016 pursuant to the *Residential Tenancy Act* (the Act), for Orders as follows,

1. A monetary Order for damage / loss ($6600.00) – Section 67
2. An Order to retain the tenant's deposits as setoff – Section 38
3. An Order to recover the filing fee for this application ($100.00) - Section 72.

The tenant filed their application on February 22, 2017 for Orders as follows:

1. An Order for the return of security / pet deposits ($2200.00) - Section 38
2. A monetary Order for loss ($4750.00) – Section 67
3. An Order for the return of the tenant's personal property – Section 65
4. 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 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, and ask questions. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Preliminary matters

The landlord submitted an amendment to their original monetary application for $6600.00 accompanied by a monetary worksheet in the claimed amended amount of $15,427.15 dated February 17, 2017 of which I have benefit of the original. The landlord testified they sent a copy to the tenant as required on the same date and in the same registered mail package containing 55 pages of evidence. The tenant testified they received the evidence but the package did not include an Amendment to an Application document or monetary worksheet, therefore were not aware of the landlord's enhanced claim. The parties were informed that an amendment must be served in the same manner as an original application so as the respondent is aware of the case against them and is able to respond accordingly. They were additionally informed that the burden is the applicant's to provide proof of service of the amendment to the respondent. In this matter the landlord and tenant did not agree the landlord's service of evidence dated February 17, 2017 included the landlord's amendment documents. The parties were notified that service of documents is rebuttable, especially in this case as the landlord's proof of service is the same as their proof of service for other documents not in dispute. Of course the landlord's proof of serving the amendment would have been clearer as a stand-alone service event. I preliminarily found the landlord did not meet their burden to provide the required evidence of service to the tenant of an amendment. Therefore, the landlord's amendment was preliminarily dismissed and the hearing proceeded on the merits of the landlord's original claim filed September 09, 2016, as well as the tenant's original application. I stated the landlord's amendment was dismissed with leave to reapply. On reflection the landlord's amendment is dismissed *without* leave to reapply.

The landlord's *original* claim sought to retain a quantum of prepaid rent as loss of revenue and to retain the tenant's original deposits in satisfaction of certain damages to the unit. The landlord's original application did not list their monetary claim. Despite it being communicated to the parties that all evidence must be submitted *as soon as possible*, evidence in support of the landlord's claim was not submitted until 5 months later, and in the interim their monetary request more than doubled. None the less, given the tenant had opportunity to review all the evidence the landlord was permitted to choose their claim items to the limit of their original monetary claim with the view of potentially resolving all primary matters in this proceeding.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy has ended. The relevant evidence in this matter is as follows. The tenancy began October 19, 2015 as a fixed term tenancy agreement ending October 31, 2016. The payable rent was in the amount of $2200.00. At the outset of the tenancy the landlord collected a *security deposit* and a *pet damage deposit* in the respective amounts totalling $2200.00 which the landlord retains in trust. The landlord provided a copy of the tenancy agreement. The parties agreed the tenant prepaid the payable rent for the entire fixed term of the tenancy (1 year + 13 days = $27,353.33). It must be noted the agreement did not include a provision respecting *liquidated damages.*

The tenancy ended 2 months earlier than originally agreed when the tenant vacated August 30, 2016 with the landlord's knowledge. The landlord accepted the tenant was vacating and was able to immediately re-rent the unit for a higher amount resulting in no loss of rent revenue for the landlord.

The parties did not agree as to the *move in* and *move out* condition inspection requirements. The landlord submitted a signed condition inspection report document (CIR) indicating the parties mutually conducted a condition inspection at the outset of the tenancy and again at the end on August 30, 2016. The landlord asserted the tenant conducted the move out inspection with them. The tenant assertively disagreed. The tenant testified they were never invited nor participated on either inspection event / date. The tenant agrees they signed the *move in* portion of the CIR in 2015 when presented to them. The tenant testified the *move in* CIR was relatively free of issues and effectively did not dispute its inclusions therefore signed it but were not given a copy. They testified they first laid eyes on the CIR document on September 08, 2016, 9 days after they vacated. It is not in dispute the landlord requested the tenant meet them at a local Starbucks on September 08, 2017 to review a CIR document and for the parties to complete and sign the document. At the time the tenant also provided their forwarding address on the CIR. The tenant disputed the landlord's document and signed the CIR in disagreement the report fairly represented the condition of the unit at the end of the tenancy. The tenant wrote into the CIR, *"He never lost any rent. Damages are not $2200 worth" – as written.* The tenant testified they were not given a copy of the CIR at the Starbucks meeting as claimed by the landlord, and only recently received a copy in the landlord's evidence package. The landlord claims the tenant received a completed copy at the Starbucks meeting. The landlord pointed to initials on the CIR and the word, "received". The tenant disagreed initialing the document.

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 they left the rental unit clean with only reasonable wear and tear. The tenant testified they did not authorize the landlord could withhold any amount from their deposits. The landlord claims the tenant left the rental unit moreover with the flooring damaged by the tenant's 5 dogs as well as damage to the back yard.

Landlord's application

The landlord presented their monetary claim as follows. The landlord seeks compensation for the cost of new laminate flooring throughout the rental unit, in part due to what they determined as elevated pet odor in the carpeted portion of the unit from urine and the presence of 5 dogs. The landlord also claims the tenant caused the original "engineered flooring" in the unit to buckle. The landlord surmised this to be the case as they claim that at the end of the tenancy they witnessed the tenant pouring some liquid cleanser onto the floor from its container causing the buckling. The landlord submitted a photo image depicting some noticeable lifting of the flooring. The tenant denied responsibility. The parties agreed the tenant had professional carpet cleaning done on the last day of the tenancy, however the landlord was notified by their new tenant the carpets had an unpleasant odor. The tenant claims the landlord did not allow proper drying of the cleaned carpets, causing a musty odor. The landlord argued the tenant's 5 dogs caused the odor. The landlord submitted invoices for the replacement of the original mixed flooring the landlord claims as approximately 10 years old. The landlord provided an invoice for new laminate flooring in the amount of $6043.41, and an invoice for removing and disposal of all the old flooring in the amount of $828.83.

The landlord also seeks $16.01 for furnace duct cleaning. The parties agreed the landlord requested and the tenant paid $350.00 for furnace duct cleaning. The landlord's claim results from their invoiced cost in the higher amount of $366.01. The landlord testified the furnace ducting was "dirty" as evidenced by a dirty furnace filter. The landlord provided a photo image of an apparently used furnace filter depicting what appears to be 'dirt' and hair. It is labeled as "extremely dirty". The landlord also claims they viewed the ducting and a cleaning contractor advised to clean it and could do so. The landlord surmised the tenant's dogs responsible for unclean ducting. The tenant disputes they are responsible for furnace duct cleaning.

The landlord also seeks for refurbishment of the back lawn with new sod. The landlord submitted an estimate of $1039.50 prepared January 30, 2017. The landlord claims the back yard was left damaged beyond remedy when the tenant vacated 5 months earlier. The landlord testified as to the high likelihood, the damage resulted from the tenant's 5 dogs. The landlord provided a photo image of the lawn from 2 months before the start

of the tenancy in 2015 and images from the end of the tenancy. The contrast in the condition of the lawn from the images is apparent. The later images depict larger sections of bare ground and apparent browning, with some indication of dog feces. It was highlighted during the hearing that the landlord's CIR evidence describes the grounds as 'F' or fair for the start and end inspections of the residential property.

The tenant disputes all of the landlord's claims that they are responsible for damages, or any consideration beyond normal wear and tear. None the less, the tenant claimed responsibility for damage to a cupboard door. The landlord provided a photo image of a broken cupboard door.

The parties argued about the state of cleanliness of the unit at the end of the tenancy. The landlord claims it was left in a "dirty condition" necessitating cleaning. The tenant disputes that it was left unreasonably clean. The landlord provided a photo image of debris under a refrigerator.

Tenant's application

The tenant presented their monetary claim. The tenants seeks the return of their deposits and double the amounts, the return of the balance of prepaid rent intended for the last 2 months of the fixed term in the amount of $4400.00, and the return of $350.00 paid to the landlord for furnace duct cleaning.

The tenant additionally seeks return of a washer and dryer laundry set they purchased during the tenancy and left in the unit, on the agreed expectation the parties would negotiate an agreed resolution for the laundry set. The landlord disagreed, testifying they did not authorize the tenant to replace the laundry set, and therefore in their determination they should simply be allowed to retain the new pair in exchange for their old washer and dryer. The parties agreed the rental unit was rented with an existing stacking pair of laundry appliances which the landlord claims were at least 15 years old. The tenant claims the landlord agreed they could exchange the old appliances after advising the landlord they had stopped working. The tenant claims they dismantled the old stacking set and stored it under cover on the property as instructed by the landlord. The tenant testified they seek the laundry pair be returned. The landlord argued the tenant did not store their appliances properly and were returned damaged. The tenant provided an invoice in which the laundry pair is represented in the amount of $1346.44.

In respect to the prepaid rent the landlord argued they are entitled to retain it because the tenant did not provide notice to end the tenancy as prescribed by the Act. The landlord did not effectively challenge the tenant's claim in respect to the $350.00 they obtained from the tenant's son.

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:

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, an applicant bears the burden of establishing their claim on the balance of probabilities.

- an applicant 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* solely on the part of the other party.
- once established, the applicant must then provide evidence that can verify the actual monetary amount of the loss. Finally,
- the applicant 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 or dispute resolution. 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 contrary

I find the parties contrasting evidence in respect to the condition inspections and the CIR problematic. I find that if indeed the parties came together and mutually conducted and completed the move out inspection on August 30, 2017 as claimed by the landlord, then the events following and the landlord's evidence in support, does not satisfy why it was required the parties meet and go over the CIR to complete and sign it on September 08, 2017. Additionally, there is no evidence supporting the landlord copied the completed CIR during the meeting at Starbucks, allowing the tenant to receive a completed signed copy of the CIR on September 08, 2017. I find the landlord's evidence in these respects does not make sense. I therefore prefer the evidence of the tenant over that of the landlord's where there is a conflict respecting the condition inspections and the CIR. I find the tenant was not offered opportunity for an inspection and that a mutual condition inspection did not occur at the end of the tenancy. I find the landlord did not provide the tenant with a copy of the CIR on September 08, 2016 or within the time prescribed by legislation in accordance with the Regulations. I find the landlord cannot rely on the *move out* portion of the CIR to establish their claims; however I accept the evidence and contents of the CIR to the extent the parties agree.

On balance of probabilities, the landlord has provided sufficient evidence that at the end of the tenancy the rental unit carpeting likely contained residual odor and wear resulting primarily from the presence of multiple pets in the rental unit for the 11 months of the tenancy.

Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements provides guidance in determining residual values or the useful life of work done, materials, or items purchased. The Policy Guideline references carpeting and tile floorings each have a useful life of 10 years, and solid hardwood / parquet flooring have a useful life of 20 years. I accept that in this matter replacement of the carpeting was reasonable. However, the landlord did not minimize or mitigate their claim. Given the landlord's estimated age of the original mixed flooring, I find the old carpeting portion of the flooring beyond its useful life and having no residual value.

Using Policy Guideline 40, I estimate the landlord's original "engineered flooring" having a useful life between that of tile and solid hardwood, as 15 years. While I may accept that this flooring material appears to have experienced some buckling I have not been

provided sufficient evidence the kitchen floor or other same flooring suffered damage solely due to the tenant's conduct in the previous 11 months of use. None the less, I accept the tenant and the 5 dogs were sufficiently responsible for excess wear and tear to necessitate replacement. With a view to compensation, in the absence of evidence, I find the original "engineered flooring" 50% of the overall. On mitigation it would be appropriate to grant the landlord compensation based on the residual value of the 10 year old flooring. As a result I grant the landlord compensation representing 50% of the landlord's replacement flooring costs, multiplied by a factor representing the remaining 5 years of the 15 years useful life of the engineered flooring (1/3). The calculation being as follows: [($6043.41 + $828.83 x 50%) = $3436.12] x 1/3 = **$1145.26.**

I find the landlord has not provided evidence of the condition of the furnace ducting at the start of the tenancy in comparison to its condition at the end of the tenancy in order to support that the tenant's responsibility for furnace duct cleaning for any reason beyond normal wear and tear. I find the landlord's furnace filter evidence is not helpful in supporting the landlord's claim. I accept that a filter operates to trap contaminants if functioning as designed and therefore reasonable for it to depict as provided by the landlord. But moreover, **Residential Tenancy Policy Guideline 1 – Landlord & Tenant, Responsibility for Residential Premises** respecting furnaces and furnace infrastructure states as follows.

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, and is responsible for replacing furnace filters, cleaning heating ducts and ceiling vents as necessary.

2. The tenant is responsible for cleaning floor and wall vents as necessary.

I find the landlord has not provided sufficient evidence to support the tenant's conduct responsible for the claimed furnace duct cleaning, and I dismiss this portion of the landlord's claim.

In respect to the landlord's claim for new sod in the backyard I accept the landlord's depiction of the back yard as appearing in poor condition and with remnants of pet feces and bare areas. I place no weight on the landlord's evidence depicting the back yard purportedly before the tenancy. The landlord has not provided sufficient evidence proving the condition of the back yard at the start of this tenancy. However, even if I were to accept that usage by the tenant's dogs during the tenancy likely resulted in a compromising of the grass area the landlord cannot rely on their argument the tenant's

dogs or the tenant as solely responsible for the compromised state of the grass, given that sod is a living and changeable fixture subject to environmental and seasonal influences. I accept the landlord's testimony they attempted to re-seed the lawn, however the landlord did not provide sufficient evidence of these efforts made to minimize this claim as required by the Act. None the less, I accept the landlord's evidence the tenant's dogs contributed to damage of the grass and as a result I grant the landlord nominal compensation in the amount of **$500.00.**

Given that I have found the landlord's CIR unreliable, I accept the balance of the landlord's photo image evidence of debris under the refrigerator in support the rental unit was left, in part, unclean. In the absence of sufficient evidence to support the landlord's claim for cleaning I grant the landlord nominal compensation for cleaning in the amount of **$100.00.**

I accept the tenant's acknowledgement respecting the damaged cupboard door. In the absence of sufficient evidence to support the landlord's claim for its repair I grant the landlord nominal compensation in the amount of **$50.00.**

Tenant's claim

It must be noted that a tenant's deposits always remain 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 an Order of the dispute resolution process.

Sections 24 and 36 of the Act and the **Act Regulations** 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 parts of either sections of the Act. On having found the landlord did not arrange a mutual inspection or offered the tenant an opportunity for an inspection pursuant to **Section 35(2)**, I find that the landlord's right to claim against the security deposit for damage to residential property was *extinguished*. Therefore, the landlord was solely left obligated to return the tenant's deposits within 15 days of receiving the tenant's forwarding address on September 08, 2016. Instead, the landlord filed for dispute resolution claiming against the deposits for damage to the residential property. It must be known that despite returning the deposit it remained available to the landlord to file an application for damages arising out of the tenancy, including damage to residential property, which in part the landlord has done by this

application. In concert with the foregoing and as a result of the above, I find the tenant is entitled to double their security / pet damage deposits in the sum amount of **$4400.00**.

The landlord argued the tenant did not provide the requisite notice to end the tenancy and therefore they deemed entitlement to keeping the balance of rent paid to the end of the fixed term. The parties were informed there is no penalty ascribed by the Act for an improper notice to end or that such a breach automatically entitles the landlord to future rent. However, the landlord may be entitled to loss of revenue as a result of the tenant's breach of the Act as provided by Section 7 of the Act, previously mentioned. The landlord confirmed they did not suffer a loss of rent revenue as they immediately re-rented the unit; therefore their claim for loss of revenue is moot. As a result, as it is undisputed the landlord is not claiming unpaid rent or that they suffered a loss of rent revenue attributable to the tenant; and it is further undisputed that the landlord currently holds $4400.00 of the tenant's money *in trust* it is appropriate that the tenant is entitled to its return which I grant in the amount of **$4400.00**.

Having previously found that the landlord was responsible for furnace duct cleaning, I grant the tenant recovery of the **$350.00** paid the landlord for furnace duct cleaning.

In respect to the tenant's claim for the return of the washer and dryer purchased by them during the tenancy and retained by the landlord, I find that **Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements** respecting **APPLIANCES**: **Washer and Dryer** as having a useful life of 15 years. Even if I were to accept the landlord's argument their original 15 year old laundry pair was returned to them in a compromised state, the fact remains the value of the appliance pair purchased by the tenant for the amount of $1346.44 exceeds the mitigated value of the landlord's 15 year old laundry pair at the end of its useful life. In concert with Policy Guideline 40 I find that the landlord's laundry pair has no residual value. I find the landlord's argument the new laundry set simply replaces the 15 year old set is not reasonable. I find it reasonable to grant the tenant return of their laundry set by way of compensation representing 75% of the original purchase cost, in the amount of **$1010.00.**

Therefore, calculations for a monetary Order are as follows. Both parties were in part successful in their applications therefore equally entitled to their filing fees which cancel.

tenant's award – balance prepaid rent in trust	*$4400.00*
tenant's award – double security and pet damage deposits in trust	*$4400.00*
tenant's award – return money paid landlord for furnace cleaning	*$350.00*
tenant's award – laundry set	*$1010.00*
Offset by	*Offset by*

landlord's award - flooring	**-** $1145.26
landlord's award - remedy to backyard	**-**$500.00
landlord's award - cleaning	**-**$100.00
landlord's award - cupboard repair	**-**$50.00
Monetary Order to tenant	**$8364.74**

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$8364.74.** 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: March 24, 2017

Residential Tenancy Branch