



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER WEST PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: a monetary order for damage to the unit pursuant to section 67; authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant SO's mother attended as a witness but left the teleconference hearing before its completion.

Tenant SO ("the tenant") and Tenant CP confirmed receipt of the landlord's application for dispute resolution package sent by registered mail. The landlord confirmed receipt of the tenant's application for dispute resolution package. Both parties confirmed receipt of the other's evidentiary materials for this hearing. I find that these documents were duly served in accordance with sections 88 and 89 of the Act. I note that, while several other sub-tenants were identified in this claim, they were not served with a copy of the landlord's dispute resolution package in accordance with the Act. As Tenant SO and Tenant CP were the signatory and principal tenants, I find that they are the responsible respondents to the landlord's claim. Furthermore, I note that the other "tenants" listed subleased the rental unit from Tenant SO, as confirmed by both tenants at this hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for damage? Is the landlord entitled to retain the tenants' security deposit? Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to the return of their security deposit? Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on September 1, 2015 as a one year fixed term tenancy. The tenant did not reside in the rental unit for the full time over the course of the one year term. The tenant sublet the rental unit, with the permission of the landlord to 5 different people. The tenants, and all sublet tenants vacated the rental unit at the scheduled end of the tenancy (August 29, 2016). The landlord testified that he continues to hold \$3540.00 that the collective tenants and subtenants paid over the course of the tenancy as security deposits and "last months' rent". *I note that the landlord testified that he no longer collects last month's rent amounts as he has realized that the Residential Tenancy Act does not allow for the collection of last month's rent amounts.*

At the start and the end of tenancy, the tenants and landlord conducted a condition inspection. The landlord submitted a copy of the move-in and move-out condition inspection reports. The landlord claimed that there was significant damage to the rental unit over the course of the tenancy and the landlord sought to recover \$11, 003.06 (reduced from the amount of \$13, 430.00 on the landlord's original application for dispute resolution).

Tenant SO testified that she was a first time tenant. She testified that she wasn't sure what to look for at a move-in inspection. She testified that she and her co-tenant were looking for "major damage" and did not make note of smaller damage to the rental unit.

The move-in condition inspection report, signed by the tenant and the landlord generally indicated, "good, clean" for most areas of the rental unit. Some issues for repair and damage identified at the move-in included ("small" items); a scrape on entry door; spots, stains on ceilings; missing freezer shelf; scuffs on living room closet door; small burn on bedroom floor; main bedroom closet door missing; three purple stains in utility room; tack holes in walls; and garbage left outside.

The landlord testified, relying on the move-out condition inspection report, that there was significant damage to the rental unit over the course of this tenancy. On the move-out condition inspection report, some of the repair issues identified included;

- Lots of stains in entryway;
- Lots of wall spills in dining room;
- Lines and stains on walls in bedrooms;
- Cracked toilet and tub (“need new”);
- Carpet ripped;
- Door to bedroom broken;
- Washer timer mechanism broken;
- Lots of garbage left;
- As well as “very dirty” –
 - Baseboards;
 - Light fixtures;
 - Window coverings;
 - Bathrooms;
 - Bedrooms; and
 - Kitchen and appliances.

On the final page of the condition inspection report, under the heading “damage to the rental unit for which the tenant is responsible”, the landlord wrote, “wall damaged listed, all cleaning listed, disposal, 2 rooms carpet have rips and/or burns, painting listed, tub has cracks, gouges, toilet cracked, washer part, drum cleaning, wall repair”. Directly below this list of damage, the tenants signed the condition inspection report. The landlords did not indicate an amount to be deducted from the security deposit: the deduction was merely noted as “TBD” – to be determined.

The landlord’s monetary order worksheet included a variety of quotes or estimates. While the landlord testified as to the individual amounts sought as a result of this tenancy, he did not submit a new or amended monetary order worksheet. I note that the amount he sought at this hearing was \$11, 003.06 while the amounts provided total as follows,

Item	Amount
Replace bathtub and toilet	\$7347.06
Wall damage repair painting	3800.00
Rubbish removal	450.00
Carpet repair	798.00
Washer timer	463.00
Cleaning at end of tenancy	500.00

Retain Tenant's Security Deposit	-3540.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$9918.06

The landlord testified that the bathtub and toilet were both cracked and could not be repaired. The landlord submitted five separate quotes from contractors. The estimates for the cost of replacement ranged from \$8,700.00 to \$14,997.00. The landlord testified that he ultimately paid \$7,347.06 for the replacement of both the tub and the sink. He provided a copy of his cheque for payment.

The tenant agreed, at the condition inspection and at this teleconference hearing that the bathtub was significantly damaged and the toilet was cracked. However, the tenant argued that the tub and toilet could have been repaired. Several of the estimates submitted by the landlord referred to leaks from both the tub and the toilet. Three of the quotes provided indicated clearly that the tub and toilet required replacement and could not be repaired: the other two quotes provided estimates for replacement but did not indicate whether repair was possible.

The landlord testified, referring to three quotes from a contractor providing three possible routes to repair the carpet rips, that he chose the least expensive alternative by replacing the carpet in one room and using the carpet pulled up to replace the carpet in another room. He testified that the carpets don't match now but they are without damage. The landlord provided a receipt for \$798.00 for the carpet repair.

The tenant acknowledged some carpet rips in the condition inspection report and at this hearing. The tenant submitted photographs of rips in the carpet in three different locations of approximately 7 inches each. The tenant submitted that the rips could have been sewn together as a repair and that replacement of any carpet was not necessary. She also stated that she believes one of the rips (in a bedroom) was there prior to the outset of her tenancy. She did not provide any documentary evidence to suggest the carpet could have been repaired by sewing but said she was told this was the case.

The landlord testified that the rental unit had been painted prior to move-in. Email correspondence with the tenant submitted for evidence at this hearing confirms that the landlord advised the tenant the unit had been painted prior to move-in. He testified that the walls required painting at the end of the tenancy. He referred to his photographic evidence as well as the condition inspection report indicating both stains and damage to the walls. He submitted a quote from one painter detailing the work that

was required within the rental unit. He submitted a receipt from a second painter at a lower cost. However, the receipt/invoice was not itemized. The landlord indicated the receipt represents his total cost of \$3800.00. The landlord acknowledged that this cost was for painting the entire residence, upstairs and downstairs while the tenants only resided in the basement unit.

The tenant could not recall whether the walls were painted at move-in. However, she did recall that she asked to paint her room. She testified that she believes the cost of painting the rental unit is excessive and also submitted that the downstairs tenants should not be required to pay for painting for the whole residence.

The landlord testified that the timer mechanism on the washer's timing knob was missing at the end of the tenancy. The tenant believes that the washer was in working order during her tenancy. She testified that she did not recall the washer timer knob breaking. The condition inspection report identified the broken washer knob at the end of the tenancy. The landlord submitted a receipt for \$463.00 for the part and the labour to replace and an indication on the receipt that the timer knob was broken off. The landlord noted that the dryer drum had to be professionally cleaned at the end of the tenancy but that he had not made a claim for this cost.

The landlord claimed that there was a significant amount of garbage left outside of the rental unit on the property and that he had to pay for its removal at a cost of \$450.00 to dispose of the rubbish. The tenant disputed that she and her co-tenants had left any garbage in the yard. She testified that the other tenants residing in the upstairs rental unit moved out at the same time and she submitted that the landlord could not identify that this was her garbage. The condition inspection report indicates, "lots of garbage left" but does not clarify whether this refers to items inside the suite or outside.

The landlord testified that cleaning of the rental unit cost over \$600.00 but that, because they initially estimated the cost to the tenants at \$500.00, they would not seek any further amount. The tenant testified that she and her co-tenants did not have time to clean the rental unit prior to the condition inspection. However, the tenant testified that she offered to come back and clean the rental unit the following day. She testified that the landlord declined her offer.

The tenants made a claim to recover their filing fee and, originally requested an amount double the value of their original security deposit. The tenants acknowledged at this hearing that the landlord filed the application within the allowable time period and that they are not eligible for double their deposit in return. The tenants originally sought \$5325.00 in their claim. At this hearing, they amended their claim to \$3640.00 to

recover the security deposit and “last months’ rent” held by the landlord as well as their filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant – in this case, the landlord - must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

In considering damage to the rental unit at the end of tenancy, Part 3 of the Residential Tenancy Regulations (section 21) provides that the condition inspection report is the best evidence of the state of repair and condition of the rental unless there is a preponderance of evidence to the contrary. As well as the testimony and documentary evidence of both parties, I rely mainly on the condition inspection report in this matter as it provides the most compelling information.

With respect to the replacement of the bathtub and toilet, the condition inspection report indicated significant damage. Beside that indication, the landlord wrote, “need new”. The tenant disputed this claim at this hearing but previously signed the condition inspection report agreeing to its contents. The tenant does not deny the damage – she merely denies that the tub and toilet required replacement.

According to Residential Tenancy Policy Guideline No. 40, the useful life of a toilet and bathtub are approximately 20 years. The landlord testified that the tub and toilet were not new at the outset of the tenancy. I find that the landlord has provided sufficient evidence, photographic, documentary and testimonial that the tub and toilet had to be replaced far sooner than would otherwise have been necessary. More than one of the landlord’s estimates for work includes an indication that due to the physical damage to the toilet and tub, they cannot be repaired and must be replaced. I accept that evidence. I accept the landlord’s proposition that the tenant is responsible for this damage as it did not exist prior to her tenancy, according to the condition inspection report. Therefore, I find that the landlord is entitled to recover a percentage (75%) of his costs for replacing the bathtub and toilet 15 years before they would require replacement. As the landlord’s total cost was \$7347.06, I find that he is entitled to **\$5510.29**.

I accept the condition inspection report as evidence that the carpet was not ripped prior to this tenancy and was ripped at the end of this tenancy. I accept the landlord's claim that he attempted to mitigate his costs by only replacing the carpet in one room and using the carpet pulled up to replace the carpet in another room. I find that this partial replacement equates to a repair of the areas of the carpet damage and I accept the invoice provided by the landlord and find that the landlord is entitled to a monetary award in the amount of **\$798.00** for the carpet repair. I find that he is entitled to the full cost of the repair as he chose to repair and not replace the carpets. I find replacement of the carpets would have been much more costly.

The landlord provided undisputed testimony that at least certain rooms in the residence had been newly painted at the outset of the tenancy. The tenant disputed the need to repaint the majority of the rental unit. In Policy Guideline No. 40, it is estimated that a landlord generally will be required to paint a residential rental unit approximately every 4 years. Since the tenants lived in the rental unit for 1 year, I find that the tenants are responsible for the 3 years that the landlord lost due to the wall damage and need to repaint early.

I have considered the landlord's receipt for \$3800.00 in painting the entire interior of this rental property. I find that the landlord is entitled to a portion of that amount. The amount should be reduced to 1/3 of the original amount as the tenants resided in the basement unit only – an amount of \$1266.00. This amount should be further reduced to take into consideration the landlord's need to repaint the unit approximately every 4 years – an amount of \$949.50. The landlord is entitled to an award of **\$949.50** towards the cost of painting.

The landlord submitted a receipt for a timer mechanism on the washer's turning knob was missing at the end of the tenancy. The tenant was unable to provide information with respect to this item so I rely on the condition inspection report which indicates the washer was in working condition at the outset of the tenancy and required repair at the end of the tenancy. I find that the landlord is entitled to **\$463.00** for parts and labour to repair the washer.

The landlord claimed that there was a significant amount of garbage left outside of the rental unit on the property and that he had to pay for its removal at a cost. The tenant provided undisputed testimony that the upstairs neighbours moved out at the same time and noted that the condition inspection move-in report referred to garbage as well. The landlord submitted that the tenants should be required to pay \$450.00. He described this as the "tenants' portion". However, given the testimony of the tenants and the

condition inspection report information, I find the landlord is entitled to a reduced (nominal) amount for disposing of garbage.

The types of damages an arbitrator may award include: out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; or “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

In this case, the landlord has proven that the tenant failed to meet their end of tenancy obligations under section 37 of the *Act* and left some items in the residence as they failed to clean at the end of the tenancy. I find that the landlord has shown some loss as a result of the tenant’s failure to clean up when moving out. I find that, to clean and to dispose of rubbish that the tenants should have removed warrants compensation. The landlord sought \$500.00 for cleaning as that was their original estimate when filing this application and \$450.00 for rubbish removal. I find that the landlord is entitled to a reasonable nominal damage award for rubbish disposal and cleaning in a combined amount of **\$650.00**.

The landlord has supported his claim for compensation with evidence including photos, quotes and receipts. He included a copy of the condition inspection report(s). All of this evidence, as well as the candid testimony of the tenant show that the landlord suffered a loss and that the tenant is responsible for most of this loss. He has provided more than one quote and receipts when required to prove the value of damage or the cost of repairs. I find that the landlord took reasonable steps to minimize his loss, including repairing instead of replacing carpets and seeking a reasonable quote for repair work. I find that the landlord is entitled to a monetary award as follows,

I issue a monetary award in the landlord’s favour in the amount of **\$4930.79**, for the following items:

Item	Amount
Replace bathtub and toilet	\$5510.29
Wall damage, painting	949.50
Garbage disposal & cleaning combined	650.00
Carpet repair	798.00
Washer timer repair	463.00
Less Tenants’ Security Deposit/Amounts held by Landlord	-3540.00

Recovery of Filing Fee for this Application	100.00
Total Monetary Award to Landlord	\$4930.79

Section 72(2)(b) allows an arbitrator to deduct the security deposit from any monetary award from the tenant to the landlord. Pursuant to section 72 of the Act, I find that the landlord is entitled to retain the tenants' security deposit in partial satisfaction of their monetary award.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I dismiss the tenant's application for a monetary amount based on loss and their application for the return of their security deposit.

I grant the landlord a monetary order in the amount of **\$4930.79**.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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: April 18, 2017

Residential Tenancy Branch