Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

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

The landlord filed their application on October 13, 2016 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. A monetary Order for damage – Section 67
2. A monetary Order for unpaid rent – Section 67
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed their application on June 30, 2016, as amended, for Orders as follows:

1. An Order for return of security and pet damage deposits - 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 pursuant to Section 63 of the Act during the hearing to no avail. The parties acknowledged receiving the application of the other. The landlord acknowledged receiving all the evidence of the tenant and had opportunity to review it. The tenant claims they did not receive evidence from the landlord. The landlord claims they sent the tenant a copy of the tenancy agreement and an invoice for remedial work to the rental unit in the amount of $559.13, for painting and repair to a bi-fold door. The landlord also submitted a calculation arriving at the claimed amount on application. The landlord did not submit evidence in support they sent their evidence to the tenant, however received by this hearing. Regardless, the landlord's invoice and calculation for monetary claim was articulated to the tenant during the hearing as to the contents of both pages, and the tenant acknowledged having a copy of the tenancy agreement. Despite the above matters 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. Neither party provided

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 relevant evidence in this matter is as follows. The tenancy began February 15, 2015 as a fixed term tenancy agreement for 3 years ending February 15, 2015. The payable rent was in the amount of $2100.00 payable on the 1st of each month. At the outset of the tenancy the landlord collected a security deposit ($1050.00) and a pet damage deposit ($250.00) in the sum amount of $1300.00 which the landlord retains in trust.

The parties agree there was a *move in* inspection mutually performed by the parties at the start of the tenancy recorded on a condition inspection report (CIR) and a copy provided to the tenant.

The tenancy ended September 30, 2016. On July 10, 2016 the tenant sent an e-mail to the landlord informing they were vacating on September 30, 2016. The landlord acknowledged the information and acted on it toward an eventual mutual inspection on September 30, 2016.

The parties have contrasting versions in respect to the *move out* condition inspection they mutually attended. The parties agree the *move out* inspection was mutually performed on September 30, 2016. Both parties agree a CIR was completed by the landlord. The landlord testified they made a copy of the CIR and that each of the parties signed the copy of the other. The tenant testified they signed solely the original CIR of the landlord and left it with them on the mutual understanding the landlord would forward a copy to them. Neither party submitted the CIR into evidence. The landlord testified they did not determine the CIR of relevance, however in their calculation deducted the security deposit of $1050.00 to satisfy a half month's rent.

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 testified they did not authorize the landlord could withhold any amount from their deposits.

The parties agreed the tenant's forwarding address was in the landlord's possession prior to the landlord filing their application.

Landlord's application

The landlord presented their application seeking compensation for damage to the unit – "house repairs", effectively *patching, sanding, priming and painting of 10 walls* ($435.00) and repair to a bi-fold door ($97.50), plus tax, in the total amount of $559.13 for which they provided an invoice. The landlord does not directly seek loss of revenue in their application, however, the parties argued as to the landlord's claim they required time after the tenancy ended on September 30, 2016 to remediate the tenant's damage before they could re-rent the unit October 15, 2016 therefore deducted the security deposit portion of the tenant's deposits in their calculations. The tenant disputes they left the unit damaged other than a compromised bi-fold door with some missing louvres. However, the tenant did not dispute the landlord's testimony the rental unit was left with evidence of "drywall hangers". The parties were not able to agree that any deficiencies were the result of reasonable wear and tear. The landlord further claimed the rental unit was left with a pet odour, however not part of this dispute.

Tenant's application

The tenant presented their application seeking the return of double their deposits.

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, in this matter, an applicant for damage or loss must satisfy each component of the 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 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.

In the absence of a CIR, or agreement by the parties, the landlord has not presented sufficient evidence to successfully support their monetary claim for painting work or repair of a louvered door. However, I find the tenant acknowledged the requirement of repair to a louvered door. In the absence of agreement respecting the extent of damage by "wall hangers" I will accept the landlord's claim for remedy to walls as having limited merit. In the absence of a CIR or otherwise sufficient evidence I grant the landlord *nominal compensation for* damage to walls and a bi-fold door in the amount of **$100.00.** An Arbitrator may award nominal damages or a nominal award which is a minimal award granted where there has been no significant loss, or where no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

It must be noted that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. However, on application a landlord's claim for loss of revenue is subject to their statutory duty pursuant to **Section 7(2)**, as stated above, to do whatever is reasonable to minimize the potential loss of revenue. I find the landlord did not provide sufficient evidence of steps taken to minimize the claimed revenue loss in this regard. I further find the landlord has not submitted sufficient evidence to support the extent of the claimed damage as a basis for delaying re-rental of the unit by one half month.

Tenant's claim

It must be noted that a tenant's security deposit always remains as the tenant's in trust with the landlord and 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 the dispute resolution process.

I find the landlord applied for damage to the unit and for unpaid rent, or more precisely loss of revenue. I find the landlord placed sufficient information in their application to effectively communicate they sought to retain the tenant's deposits as set-off to their claims. Therefore I accept the landlord applied to retain the tenant's deposits in partial satisfaction of their claims for unpaid rent as well as for damage, and I find they did so within 15 days of having been provided the tenant's forwarding address in concert with the Act.

Sections 35 and **36** of the Act and the **Act Regulations** in respect to the 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 this section of the Act. I find that the landlord's right to claim against the security deposit for ***other than damage*** not extinguished provided they do so within the time prescribed by **Section 38(1)** of the Act. In this matter I find that the landlord has not provided sufficient evidence they aptly complied with **Section 35(4)** of the Act. None the less, I find the landlord filed their application within 15 days of receiving the tenant's forwarding address and filed against the deposit for **other than *damage*** on the basis of unpaid rent. As a result, I find the tenant is not entitled to the *doubling* provisions afforded by **Section 38(6)** of the Act. As stated above the tenant is entitled to any portion of their deposits to which the landlord is not authorized to retain.

As both parties were fractionally successful in their respective applications they are equally entitled to recover their filing fee, which on calculation cancel out and therefore not included.

In regards to calculation, the security deposit and pet damage deposit in trust with the landlord will be off-set from the award made herein.

landlord's award	100.00
off-set less tenant's security deposit	*- 1050.00*
off-set less tenant's pet damage deposit	*-250.00*
Monetary Order to tenant	***(-1200.00)***

I Order the landlord may retain $100.00 of the tenant's deposits and return the balance of $1200.00, forthwith. **I grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$1200.00.** 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.

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 24, 2017

Residential Tenancy Branch