



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act). In the hearing the landlord amended their claim on application seeking solely to recover unpaid utilities, cleaning costs, a labour cost, and rent for over holding the rental unit 1 day.

Both parties attended the hearing and were given opportunity to present all relevant evidence and testimony in respect to the landlord's claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The tenant acknowledged receiving the evidence of the landlord, including the digital evidence on DVD, and was able to review it. The tenant further acknowledged they did not provide evidence to the landlord, despite sending an evidence package to this proceeding. As a result I have not relied on this submission in my deliberation or this Decision. None the less, the tenant was permitted to present their evidence orally in testimony and for the landlord to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I have reviewed all oral, written and document evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. I have benefit of the written tenancy agreement stating the tenancy began December 01, 2014. The tenant vacated by the end of day November 01, 2016 by mutual oral agreement of the parties to vacate "on November 01".

The parties agreed that at the outset of the tenancy the landlord collected a security deposit in the sum amount of \$950.00 which the landlord retains in trust. The evidence is that the parties did not agree as to the administration of the deposit at the end of the tenancy. Despite considerable discussion between the parties during the hearing, they disagreed as to their respective recollections regarding payment of a pet damage deposit during the tenancy. The document evidence of the parties is not clear. The tenant asserted they paid it in the total of \$950.00 in portioned cash payments, and the landlord equally asserted they did not collect a pet deposit.

The landlord and tenant further disagreed as to the completion of the move out inspection process. The landlord provided a copy of the condition inspection report (CIR) signed by solely the landlord on November 01, 2016. The parties agreed that words exchanged during the condition inspection caused dispute between them and they parted ways. None the less, the landlord seeks for the tenant to be held accountable for the cost of some cleaning in the invoiced amount of \$136.90 and for cutting the grass in the amount of \$80.00, representing their personal labour. The landlord provided photo images of the rental unit interior as ancillary to their record of the condition inspection of the unit on November 01, 2016. The landlord included photo images of the residential property lawn. The landlord cited that the grass appeared of a length requiring cutting which they proceeded to do. The parties were informed that policy guidelines respecting responsibilities of tenants and landlords state that generally in tenancies of a house the tenant is responsible for routine yard maintenance (Residential Tenancy Policy Guideline 1). The tenant disputes both monetary claims.

The parties agreed the tenant will pay the landlord for unpaid utilities in the amount of \$355.40.

The landlord is claiming one day of over holding the rental unit in the prorated amount of \$63.33. The parties had agreed the tenant would vacate the rental unit November 01, 2016 rather than October 31, 2016 as previously agreed. However, neither party articulated the time on the ultimate day the tenant would complete their move resulting in a difference of understanding. The landlord determined the time to be noon. The tenant determined the time to be as late as midnight of the day. The landlord testified they received information that noon is the required time to vacate and they had only agreed to a 1 day extension determined by them to be noon on the extended day of November 01. The landlord testified that as a result they began their inspection following the time of noon on November 01, 2016, inclusive of photo images provided into evidence. The tenant testified they were in the midst of moving their belongings after noontime on November 01 and subsequently cleaned the rental unit before vacating on or around 7:00 p.m. The tenant claims they left the rental unit clean and that the landlord's photo images were taken before they cleaned and vacated. The landlord's photo images depict some of the tenant's belongings remaining and some of the areas of the unit, particularly window frames, with some debris. Three days later the landlord hired Molly Maid to clean the entire house for which they paid \$136.90.

Analysis

The full text of the Act, Regulation, and Rules of Procedure and other information can be accessed via the RTB website: www.gov.bc.ca/landlordtenant.

It must be known that the landlord, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities.

On preponderance of the evidence before me, I find that **Section 7** of the Act provides as follows in respect to the landlord's claims.

7. 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.

- 7(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.

Effectively, the landlord bears the burden of establishing their claims by proving the existence of a loss stemming directly from a breach of the agreement or contravention of the *Act* by the tenant. Once established, the landlord must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the losses claimed. The onus is on the landlord to prove expenditure is reasonable under the circumstances or on the tenant to show that the expenditure is unreasonable.

In addition **Section 37** of the Act is further relevant to the issues of this dispute and it states as follows.

Leaving the rental unit at the end of a tenancy

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In respect to the landlord's claim for cleaning I accept the landlord's testimony they came upon the rental unit shortly after noon on November 01, 2016, in midst of moving and unclean, and proceeded to inspect and record the condition of the unit. However, they also acknowledge the tenant did not fully vacate until considerably later on the same day, for which they hold the tenant accountable for over holding, but did not

record the condition of the unit after the tenant had vacated. On a balance of probabilities I find the landlord's record of their inspection does not accurately reflect the

condition of the unit *at the end of the tenancy, after the tenant fully vacated*. I find it is the responsibility of the landlord to meet their burden of proof in supporting their claim the tenant left the unit unclean necessitating additional cleaning beyond reasonably clean as required by Section 37 of the Act. I find the landlord's testimony leads me to doubt their record of the condition of the unit once vacated so that I must discount it. As a result **I dismiss** the landlord's claim for cleaning.

None the less, in respect to the landlord's claim for over holding the rental unit I find that Section 37 stated above prescribes that unless the parties otherwise agree the tenant must vacate by 1:00 p.m. on the day the tenancy ends. I find the evidence in this matter is that the parties solely agreed to an extension of 1 day to November 01, 2016, placing the move out time to 1:00 p.m. November 01, 2016. As a result, **I grant** the landlord **\$63.33** for over holding the rental unit by 1 day.

In respect to the landlord's claim for grass cutting I accept their photo image evidence depicts the grass sufficiently overgrown as to require cutting. As a result **I grant** the landlord **\$80.00** for grass cutting.

The parties' agreement respecting the unpaid utilities of **\$355.40** will be factored in the Monetary Order calculation.

The agreed security deposit held in trust will be offset from the award made herein. I make no finding in respect to the tenant's claim they paid a pet damage deposit. It remains available to the tenant to seek resolution of the matter by making an application for dispute resolution if they have evidence they paid a pet damage deposit.

Calculation for Monetary Order is as follows:

Unpaid utilities	\$355.40
Grass cutting	\$80.00
Over holding unit: 1 day	\$63.33

landlord's monetary award total	\$498.73
<i>Minus tenant's security deposit held in trust by landlord</i>	<i>-\$950.00</i>
Monetary Order / balance to tenant	(\$451.27)

Therefore,

I ORDER the landlord may retain \$498.73 of the tenant's security deposit in partial satisfaction of their award, and **I grant** the tenant a **Monetary Order** pursuant to Section 67 of the Act for the balance of their security deposit in the amount of **\$451.27**. 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 and the balance dismissed. The tenant is given a monetary Order for the balance of their deposit.

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: June 07, 2017

Residential Tenancy Branch