



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MND, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord made February 09, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid rent and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing. The tenant acknowledged receiving all of the document and photo evidence of the landlord and that they did not provide evidence to this matter. The tenant claims filing an application less than a week before this hearing for the return of their deposit. The parties were provided opportunity to mutually resolve their dispute to no avail. Each party provided their testimony during the hearing. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present.

The hearing proceeded on the merits of the landlord's original application subject to any oral changes or agreement by the parties. 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 landlord's application and 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 by the parties. The tenancy began July 2015. It must be noted the tenancy agreement includes an addendum. Rent in the amount of \$1000.00 was payable in advance on the first day of each month. The agreement excludes utilities related to the rental unit as part of rent. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$500.00 which they retain in trust. The tenancy ended June 30, 2016 when the tenant vacated.

The parties agreed they conducted a mutual inspection of the unit at the start of the tenancy. The landlord provided into evidence the Condition Inspection Report (CIR) indicating the parties agreed the report fairly represented the condition of the unit at the start of the tenancy. Despite the lack of a date on the CIR the parties agree that at the end of the tenancy they conducted a mutual inspection and the landlord completed the CIR. The tenant disagreed over certain details during the inspection and generally disagreed with some of the landlord's inclusions. None the less the tenant stated on the CIR they disagreed with the report, signed the CIR and included a written forwarding address within the CIR.

The landlord makes the following monetary claims as per their Monetary Order Worksheet, and for unpaid rent.

During the hearing the landlord withdrew their claim of a *lawnmower part* (-\$31.08), and the parties agreed with compensation to the landlord for *general repairs* in the amount of \$200.00, for a *screen door* in the amount of \$70.00, for a *bathroom cabinet* in the amount of \$71.36, and for *outstanding utilities* in the amount of \$86.81: for the agreed sum of \$428.17. In addition, the tenant agrees they did not satisfy the payable rent for the last month of occupancy in the amount of \$1000.00. Therefore, I will factor these agreed amounts in final calculations.

The landlord claims the tenant damaged 4 window blinds throughout the rental unit for which they provided close-proximity photographs. They provided evidence the blinds consisted of 2 larger blinds each 2 years old replaced for the cost of \$95.04 inclusive of

tax. They provided evidence the remaining 2 smaller blinds each were 5 years old replaced for the cost of \$31.36 inclusive of tax.

The landlord claims the rental unit was left with some walls damaged by bb-gun pellet entry points and although filled by the tenant they required repainting. The landlord provided a series of photographs of the damaged areas as well as the gun pellets. The landlord provided an invoice for painting and for the paint in the 2 amounts totalling \$199.04.

The landlord claims the rental unit was left with 4 hollow panel doors and 1 hollow bi-fold panel door damaged by bb-gun pellet entry points and indelible marking pen. The landlord provided a series of photographs of the damaged doors as well as the gun pellets. The landlord provided an invoice for the doors claimed to be as old as the rental unit of unknown age but undisputed to be at least 20 years old. The landlord's claim for doors is the sum of \$199.03. The tenant did not dispute this claim stating their 20 year old son was responsible for the bb-gun damage.

The landlord claims the rental unit was left with a damaged bathroom vinyl floor requiring replacement in the estimate amount of \$479.49 for the floor and \$90.00 for removal and return of the same toilet for a claim sum of \$569.49. The landlord testified the flooring to be 10 years old. They provided a series of photographs of the floor as well as respective estimates for flooring. The landlord also provided a third party's estimate to deal with the toilet.

The landlord provided evidence the rental unit carpeting was left stained and damaged despite cleaning. They provided a series of photographs of the carpeting as well as an estimate for total replacement of the carpeting and underlayment, including installation, delivery and disposal of old carpeting in the amount of \$2881.09. The landlord testified the carpeting to be 5 years old. The tenant did not effectively dispute this portion of the claim.

The landlord provided evidence the rental unit was left with 2 ceiling light fixtures absent of shades. They provided 2 photographs of 2 functional light fixtures affixed to the

ceiling with bulbs turned on. The landlord testified the ceiling fixtures operated as intended but had missing shades. They determined to purchase 2 new fixtures at a cost of \$38.39. The tenant claims they simply removed and retained the shades as they had solely lost the fastening nut holding the shades.

Analysis

The full text of the Act, Regulation, and Residential Tenancy Policy Guidelines can be accessed via the RTB website: www.gov.bc.ca/landlordtenant

The landlord, as applicant, bears the burden of proving their monetary claims. I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: that is, deterioration, breakage or destruction exceeding reasonable wear and tear.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss and damage made herein:

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, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary value or

amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation, and to mitigate or minimize a loss claimed.

In respect to the landlord's claim for replacement of blinds I accept the evidence supports the landlord's claim of damage to the blinds during the tenancy. I find that **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Furnishings** states the useful life for venetian blinds as 10 years. As a result I grant the landlord the mitigated value of their claim in compensation in the mitigated amount of **\$15.68** for the 5 year old blinds and **\$70.03** for the 2 year old blinds.

I find the landlord has provided sufficient evidence supporting they are owed for painting and paint in the amount of **\$199.04**.

Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Doors and Windows states the useful life of Doors as 20 years. As a result I find the mitigated or depreciated value of the 20 year *plus* old doors of the rental unit as \$0.00 and therefore I must dismiss this portion of the landlord's claim.

Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Finishes states the useful life of tile flooring as 10 years. As a result I find it reasonable to extrapolate that 10 year old vinyl flooring has a similar useful life, rendering the mitigated or depreciated value of the vinyl flooring as \$0.00. As associated with the flooring replacement, I do accept the landlord's *third party*, or hearsay estimate as valid evidence respecting the toilet's removal and return. As a result, I dismiss the entire portion of the landlord's claim referencing a bathroom floor replacement.

I find it reasonable the landlord is owed for the replacement cost of the damaged carpeting reflecting **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Finishes** which states the useful life of carpeting as 10 years. As a result I grant the landlord the mitigated value of their claim as compensation in the amount of 50% of their claim related to re-carpeting costs for the 5 year old carpeting in the mitigated amount of **\$1440.54**.

In respect to the landlord's claim for 2 light fixtures I find it was available to the landlord to otherwise mitigate their claim by replacement of the fastening nut or shades for the light fixtures which still operated as intended. I find insufficient evidence establishing the landlord aptly mitigated this portion of their claim, and as a result I must dismiss it.

I find that **Residential Tenancy Policy Guideline 17 – Security Deposit and Set Off**, in relevant part states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

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 dispute resolution for its return.

In addition, **Section 38** of the Act states that if the landlord does not return the security deposit, or file for dispute resolution to retain the deposit, within 15 days of receiving the tenant's written forwarding address and does not have the tenant's written agreement to keep the deposit, the landlord *must pay the tenant double* the security deposit.

In this matter I find the tenant provided their written forwarding address to the landlord on June 30, 2016 and I find the landlord applied for dispute resolution 7 months later in 2017. Therefore, as a result of **Section 38** of the Act and **Residential Tenancy Policy Guideline 17**, I find it appropriate that *double* the tenant's security deposit will be offset from the award made herein.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

Calculation for Monetary Order is as follows:

sum of agreed claims of loss	\$428.17
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agreed unpaid rent June 2016	\$1000.00
blinds \$15.69 and \$70.03	\$85.71
painting and paint	\$199.04
carpeting	\$1440.54
landlord's filing fee	\$100.00
total of landlord's monetary award	\$3253.36
<i>less double the tenant's security deposit (\$500.00)</i>	<i>- \$1000.00</i>
Monetary Order for landlord	\$2253.36

I Order that the landlord may retain the security deposit of \$500.00 in partial satisfaction of their award, and **I grant** the landlord a **Monetary Order** under Section 67 of the Act for the amount of **\$2253.36**. 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 part has been granted, and the balance dismissed.

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 19, 2017

Residential Tenancy Branch