



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction

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

The landlord filed on December 12, 2016 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows;

1. An Order to retain the security deposit in satisfaction of monetary claim – Sections 38 and 67.
2. An Order to recover the filing fee for this application - Section 72.

The tenant filed on January 03, 2017 for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing. Each acknowledged receiving the evidence of the other. The parties were given opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving the evidence of the other. Despite the evidence only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present relevant testimony, and make relevant submissions of evidence.

I preliminarily accept the landlord seeks to retain part of the security deposit in compensation for claimed damage to the unit. 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 undisputed evidence in this matter is as follows. The tenancy began September 01, 2014 as a written tenancy agreement for a furnished rental unit. I do not have benefit of the tenancy agreement terms or conditions. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1000.00 which the landlord retains in trust. The payable monthly rent was in the amount of \$1400.00. The parties agree there was no *move in* mutual condition inspection conducted at the outset of the tenancy, however there was a *move out* mutual condition inspection conducted. The landlord provided an unsigned copy of the Condition Inspection Report (CIR). The parties testified they did not agree as to the administration of the security deposit at the end of the tenancy. The landlord attempted to return a portion of the deposit but ultimately retained the entire amount and filed for dispute resolution December 12, 2016. The tenant testified they sent the landlord their written forwarding address by registered mail December 15, 2016 and is acknowledged received by the landlord. The tenancy ended November 30, 2016.

Landlord's application

The landlord seeks compensation for remedy to the kitchen countertop / cabinetry damaged by water, which the parties agree resulted from a leaky or compromised kitchen sink faucet. The landlord testified they first learned of a leaking faucet unit (the leaking condition) when a plumber attended the rental unit on an unrelated matter in July 2016. At this time the tenant was present, the landlord was not. The tenant testified they first noticed water around the sink 1 or 2 days before the plumber arrived but had yet to notify the landlord.

The landlord testified the plumber informed them during their attendance they had made the leaking condition better but that a leaking condition or drip remained and the faucet required replacement. The tenant testified that the plumber had tightened one of the taps. They testified the plumber informed them they could replace the faucet the same day if provided a faucet. One was not immediately provided. The landlord testified the plumber told them they could return in a week to replace the faucet. The landlord testified that their understanding from the plumber's communication was that the faucet was dripping from the faucet end and that an urgent remedy was not needed. Therefore, the landlord determined to attend the unit with a new faucet 7 days later and replaced it. At which time the landlord noted the surrounding cabinetry had endured some water absorption and was wet and the backsplash was separated from the wall. The tenant testified the cabinetry materials had separated from the moisture, and set aside the material.

The landlord argues that the tenant failed to notify them in a timely manner as to the leaking condition and as a result they should bear responsibility for the damage to the cabinetry. The tenant argued any notice of a leaking condition was noted soon before the plumber attended; and, once they attended the plumber communicated the problem to the landlord whom relied on their assessment moving forward. And, the landlord determined to wait a week to replace what they were informed was a leaking condition from the time they were informed.

The landlord provided a series of photo images of the claimed damage and a quote for the replacement of the countertop / cabinetry in the amount of \$890.40.

Tenant's application

The tenant seeks the return of their deposit and compensation pursuant to Section 38 of the Act for double the security deposit.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications 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 the evidence, 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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, 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 other party. 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.

Section 33 of the *Act* states the landlord must post and maintain information on the residential property as to whom the tenant must contact for *emergency repairs*. I find that neither the *Act* and Regulations nor Policy Guidelines specifically address how timely a landlord must be notified of a problem; however it is reasonable to assume the sooner is to the better for both parties. However, in this matter the landlord was informed by their own contractor of the leaking condition near the outset of the problem. From the available evidence I accept the tenant was the first to know of a leaking condition and the landlord's plumber soon followed and immediately informed the landlord. Therefore, it cannot be said there was a failure to inform the landlord of the leaking condition in a timely manner. I find the landlord has not proven, on a balance of probabilities that the conditions that followed and the claimed loss was the direct result of the actions or conduct of the tenant in violation of the *Act* or tenancy agreement. As a result I must dismiss the landlord's application.

Tenant's claim

Section 23 of the *Act* states that, at the start of a tenancy the landlord must complete a condition inspection report in accordance with the regulations.

Section 24(2)(c) of the Residential Tenancy Act in relevant part further states:

- (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that since the landlord has not met the burden of proving that a condition inspection report was done at the outset of the tenancy, or given to the tenant, it is my finding that the landlord's right to claim against the security deposit for damage was / has been extinguished.

Therefore even though the landlord filed a claim against the security deposit, they did not have the right to do so, and pursuant to Section 38 of the Act were obligated to return the security deposit within 15 days of the date they received a forwarding address in writing. Upon failure to do so Section 38(6) of the Act prescribes they are now required to pay double the security deposit to the tenant. The tenant has not waived this provision. I find the tenant paid a deposit of \$1000.00 and therefore the landlord is liable for double the amount of \$2000.00. The tenant is further entitled to recover their filing fee for a total award of **\$2100.00**.

I **grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$2100.00**. 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 is dismissed.

The tenant's application has been granted and is given a Monetary Order.

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

