



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord made February 14, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid utilities and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposits of the tenancy in partial satisfaction of the monetary claim.

Both parties participated in the hearing. The tenant acknowledged receiving all of the document, photo and digital evidence of the landlord and that they did not provide evidence to this matter pursuant to the Rules of Procedure. The landlord agrees they received some evidence from the tenant which was claimed faxed to this proceeding several hours earlier. I accepted the tenant's evidence orally. Each party provided testimony during the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. 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 15, 2015 and has since ended. I have benefit of the tenancy agreement which includes addenda. Rent in the amount of \$1300.00 was payable in advance on the first day of each month and the parties agreed that utilities were not inclusive of rent. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the respective amounts of \$650.00 for a sum of \$1300.00, which the landlord retains in trust. The tenancy ended January 21 or 22, 2017 when the tenant fully vacated the unit of their belongings and the landlord retook possession of the unit the same date, also already having initiated renovations.

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, on January 21 or 22, 2017, they conducted a mutual inspection and the landlord completed the CIR. The tenant signed the CIR indicating they agreed the report fairly represented the condition of the rental unit. The CIR includes the tenant's forwarding address which the landlord subsequently received by electronic mail and they transcribed into the CIR.

The landlord makes the following monetary claims as per their "Finalized Costs" document.

During the hearing the parties confirmed they had come to agreement the landlord would retain \$215.91 from the tenant's deposits, leaving a balance of \$1084.09 in trust.

During this proceeding the parties came to agreement respecting the landlord's claims that the landlord was owed compensation in the amounts of \$584.27 for kitchen cabinetry, \$12.42 for a closet knob and door track, and \$6.60 for wood filler, for a resulting sum of \$603.29. To be factored in final calculations.

The balance of the landlord's claim represents the landlord's determination the tenant damaged 4 window blinds throughout the rental unit for which they provided close-proximity photographs.

They provided invoice evidence the replacement blinds consisted of 4 aluminum blinds each 3.5 years old replaced for the aggregate cost of \$236.25 inclusive of tax. The tenant disputed the landlord's expenditure claiming the landlord did not replace the damaged blinds with *like-quality* blinds, but rather of a higher grade, therefore did not mitigate or minimize their claim.

The landlord claims the rental unit was left with some baseboards and walls damaged primarily by scratches and gouges from the tenant's pets. The landlord identified the back of a bathroom door within their photo image evidence as being prominently scratched. The tenant did not effectively disagree with the landlord's claim or their evidence in this regard. The landlord provided photo images and an invoice for solely painting materials, such as paint and painting supplies for the remediation in the amount of \$148.01 and 12.42 inclusive of tax. The landlord testified that the painted areas were previously attended to 3.5 years ago.

The landlord claims the rental unit toilet was left cracked and broken at the bottom of it and required replacement. The tenant did not effectively disagree. The landlord provided a series of photographs of the damage as well as an invoice for a replacement toilet representing \$144.48 inclusive of tax.

The landlord provided evidence the rental unit carpeting was left stained by multiple pet urine marks which the landlord claims would not have been adequately alleviated even if they had allowed the tenant to reasonably clean the carpeting before fully vacating.

The tenant testified the landlord had already removed the carpeting before they fully vacated and did not allow opportunity for them to have the carpeting thoroughly cleaned. The landlord provided a series of photographs of the stained carpeting as well as the invoice for total replacement of the carpeting and underlayment, including installation in the sum amount of \$1436.43. The landlord testified the carpeting to be 3.5 years old. The landlord's photo image evidence displays the underside of all the carpeting removed which depicts an abundance of staining on the underside of the carpet material which the landlord argued also contributed to pet odour. The landlord testified they were eager to accommodate a new tenant for February 01, 2017; and, with a view to other remedial work did not have time to accommodate unsuccessful remedies for the pet staining. The tenant argued that the claimed carpet staining

should be viewed as reasonable wear and tear in the presence of a dog and a cat occupying the rental unit.

The landlord provided invoice evidence they expended \$150.00 for professional “post-repairs cleaning”. The landlord testified the tenant would have been routinely accountable for cleaning the unit before vacating, and following the claimed repairs the unit remained un-clean as a result of remedial work for which the tenant was deemed accountable. The tenant argued the landlord’s conduct at the end of the tenancy did not allow for cleaning as the landlord was removing carpeting and engaging in other work which would result in, again, soiling the unit.

The landlord is claiming \$21.00 for refuse disposal / dumping costs associated with the remedial work to the rental unit. They have not provided a receipt. The tenant did not agree nor disagreed with this portion of the landlord’s claim.

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 collapse exceeding wear and tear under normal circumstances.

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 pursuant to the test established by Section 7 above 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 further

accept the tenant's testimony the landlord did not replace the damaged blinds of the unit with *like-quality* venetian blinds and that an award based on the landlord's claim would be an unjust enrichment. I find the landlord's photo image evidence of the damaged blinds depicts them as being other than aluminum in construction. On the balance of probabilities I find they appear to be of plastic construction, as depicted by the broken areas of the old blinds. None the less, I find the landlord is entitled to compensation for this damage, which I grant in the *nominal* amount of **\$100.00** inclusive of mitigation for the 3.5 year old blinds.

I find the landlord has provided sufficient evidence supporting they are owed for painting and paint supplies. **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Finishes > Painting** states the useful life of interior painting as 4 years. As a result I find the mitigated or depreciated value of the 3.5 year old paint of the rental unit as \$18.50. I grant the landlord their claim for painting supplies in the claimed amount of \$12.42 for a sum award of **\$30.90**.

I find the landlord has provided sufficient evidence they are owed compensation for a broken toilet. **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements –**

Mechanical > tubs, toilets and sinks states the useful life of toilets as 20 years rendering the mitigated or depreciated value of the toilet as 82.5% of the landlord's claim or **\$119.20**.

I find it reasonable the landlord is owed for the replacement cost of the damaged carpeting although pursuant to **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 find the landlord is entitled to the mitigated value of their claim as compensation in the amount of 65% of their claim on application to re-carpet the 3.5 year old carpeting, for which I grant the landlord **\$933.68**.

In respect to the landlord's claim for cleaning I find the landlord effectively waived the

tenant's obligation to clean the unit at the end of the tenancy by starting renovations before the tenant fully vacated and cleaned the unit. As a result I must *dismiss* this portion of the landlord's claim.

I find the landlord's claim for disposal costs of \$21.00 is not extravagant, but moreover is reasonably associated with the landlord's other claims. As a result, in the absence of

a receipt in this matter I accept the landlord's claim and grant them **\$21.00**.

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:

parties' agreed claims on landlord's application	\$603.29
4 blinds	\$100.00
painting / paint / paint supplies	\$30.90
toilet	\$119.20
carpeting	\$933.68
dumping / disposal costs	\$21.00
landlord's filing fee	\$100.00
total of landlord's monetary award	1908.07
<i>Less tenant's balance of deposits in trust</i>	<i>- 1084.09</i>
Monetary Order for landlord	\$823.98

The landlord's application in part has been granted, and the balance dismissed.

Conclusion

I Order that the landlord may retain the tenant's security and pet damage deposits in their entirety in partial satisfaction of their award.

I grant the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of **\$823.98**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

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 27, 2017

Residential Tenancy Branch