Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACSEM HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNSD, MNDC, MNR
Landlord: MNSD, MNR, FF

Introduction

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

The landlord filed on January 27, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A monetary Order for unpaid rent / utilities – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72.

The tenant filed on April 01, 2017 for:

1. An Order for return of security deposit - Section 38
2. A Monetary Order for loss – Section 67
3. A Monetary Order for the cost of emergency repairs.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. The parties were apprised that despite their 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. 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 *relevant* evidence in this matter is as follows. The tenancy began October 01, 2013 as a written fixed term tenancy agreement, of which the hearing had benefit of a copy. At the outset of the tenancy the landlord collected a security deposit in the amount of $8250.00 which the landlord retains in trust. The payable rent was in the amount of $1650.00 due in advance on the first day of each month, with the utilities to be "split with the ground floor tenant". The parties agree there was a *move in* condition inspection at the outset of the tenancy and there was a *move out* condition inspection conducted between the tenant and the landlord. Both parties agreed the requisite Condition Inspection Report (CIR) was completed at the start and end of the tenancy and the tenant received their copy in accordance with the Act. I was not provided with a copy of the CIR. At the end of the tenancy the parties did not agree as to the administration of the security deposit

The tenancy ended January 13, 2017 when the tenant vacated. They testified that on January 12, 2017 they sent had sent the landlord a letter by registered mail stating they were ending the tenancy. I do not have benefit of the letter or the reason(s) stipulated within the letter, however the tenant claims it was done as notified by an information officer of the Residential Tenancy Branch (RTB). The tenant testified they were not advised to reference the legal doctrine of "frustration" within their letter to the landlord, however found the information later on the RTB website. The tenant claims and the landlord does not dispute that the tenant provided the landlord with a written forwarding address on January 20, 2017. The landlord subsequently filed their application on January 27, 2017.

Landlord's application

The landlord sought to retain $150.00 for unpaid utilities and $475.00 as loss of rent revenue for February 2017. The landlord testified the amount for utilities was a reasonable estimate. The tenant testified that $45.00 was, in their experience a reasonable amount to the end of the tenancy. The landlord did not provide supporting evidence of their claim for utilities. The tenant claims that as they followed the instructions of the Branch in ending the tenancy that the landlord cannot claim rent for February 2017.

Tenant's application

The parties agreed that the tenant is owed $100.00 for a purchased ceiling fan which has remained in the rental unit.

The tenant seeks the return of double their security deposit.

The tenant claims for a purchased keyless entry lock which remained in the unit in the amount of $350.00 inclusive of tax and installation. The tenant did not provided a receipt, however the landlord agreed that $300.00 was a reasonable amount to compensate the tenant in this respect. The landlord argued they could purchase a similar unit for $289.00, however did not factor taxes or installation.

The tenant claims they expended $100.00 for the cleaning and repair of the fireplace. The tenant claims that the fireplace flue was stuck open and allowing a cold draft in the unit. The landlord disagreed about the issues with the fireplace and that by agreement the tenant was not permitted to use the fireplace.

The tenant sought compensation for their labour described as *six hours of labour* ($150.00) and $150.00 for *taking garbage (and) taking leaves to the dump.* The tenant also sought $75.00 for, "three hours of lost wages". The foregoing sum is purported by the tenant in support they had an agreed or implied arrangement with the landlord to "manage" the residential property. The tenant claims they did certain work related to the property which in the normal course was the responsibility of the landlord. The tenant testified they had to be at the rental unit for the ceiling light and keyless entry door lock install as well as for the fireplace work, dealing with the aforementioned refuse, and fixing an issue with the gutters. The landlord argued that they did not have any arrangement for the tenant to work for the landlord and that any work they did on the property was through their own volition and pursuant to solely specific consent for certain items to be dealt with. The landlord testified they had agreed to reimburse the tenant for certain purchases before the tenant suddenly vacated the unit.

The tenant also sought for the *prospective loss* of revenue for not having obtained a roommate for the 3 months of occupancy, because the landlord did not authorise obtaining a roommate. The landlord testified that any disapproval of a roommate was of

a roommate that smoked and that the tenancy agreement stated there will be no smoking inside the rental unit. The parties acknowledged, however, that despite the landlord's lack of approval of the tenant's choice of roommates the tenant knew they could have obtained a roommate as they became informed that the Act and the tenancy agreement do not prohibit having a roommate. However, despite this knowledge the tenant testified they instead determined to simply move. Again, the tenant did not provide evidence of the basis for their move by way of the reasons stated in their Notice to End tenancy.

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 all evidence submitted, and on balance of probabilities, I find as follows:

Section 38(1) of the Act provides as follows

> **38**(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> 38(1)(a) the date the tenancy ends, and
>
> 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

If the landlord does neither Section 38 states that the landlord must pay the tenant double their deposit(s).

I find the tenant provided their forwarding address January 20, 2017and the landlord

made their application within the required 15 days to do so in accordance with **Section 38(1)** of the Act. As a result, the tenant is not entitled to the doubling provisions afforded by **Section 38(6)** of the Act. Therefore, the tenant's *original* security deposit amount will be offset within calculation in accordance with this Decision.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an 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* 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, an applicant bears the burden of establishing their claim on the balance of probabilities. One 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, a party must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Landlord's claim

I find that the landlord has not provided sufficient evidence in support of their claim of $150.00 for utilities. None the less, I accept the tenant's testimony that the landlord is reasonably owed **$45.00** for utilities and I grant the landlord this amount.
In the absence of sufficient evidence from the tenant as to the contents of their Notice to End Tenancy, I find that the tenant did not end the tenancy pursuant to the fixed term provision of the tenancy agreement, nor in accordance with Section 45 of the Act. A tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term. And, the landlord's claim of any loss of revenue is subject to their statutory duty pursuant to section 7(2) to do whatever is reasonable to minimize the loss. In this matter I find that the landlord, on balance of probabilities, did not know of the tenant's breach of the agreement until into the second part of January 2017 in order to take steps to minimize the loss for February, 2017. In this matter, on balance of probabilities I find the landlord's claim of $425.00 for loss of revenue in its fractional amount for the month of February 2017 is neither extravagant nor unreasonable. As a result, I grant the landlord their claim in the amount of **$425.00**.

As the landlord was in part successful in their application they are further entitled to their filing fee of **$100.00**.

Tenant's claim

I find the tenant and landlord agreed the tenant is owed **$100.00** for a ceiling fan/light therefore I award the tenant this amount.

I accept the landlord's agreement the tenant is owed in the least $300.00 for the installation of a keyless entry door lock. I further accept the landlord's acknowledgement they did not factor taxes or installation costs. On the parties' agreement in principal the tenant is owed compensation in this regard, in this matter I grant the tenant **$350.00.**

In the absence of a receipt I find the tenant has not provided sufficient evidence of their claim for cleaning or repairing the fireplace. However, in this matter, I accept the tenant's testimony that a stuck fireplace flue was contributing to the tenant's discomfort and as a result, I grant the tenant *nominal* compensation in the amount of **$50.00**.

I find that the tenant has not provided sufficient evidence that the landlord tasked them or authorized them to perform all of the work the tenant claims in their application should have been the responsibility of the landlord, thus entitling them to be compensated in their claims totalling $300.00. As example in this portion of the tenant's claims I am satisfied by the tenant's own evidence within an e-mail dated

November 14, 2016 – subject: Lawn and Evestrough - that the tenant took it upon them to rake up leaves. The tenant then informed the landlord the lawn care contractor told them they were responsible to do the raking of leaves for the landlord. As a result, I prefer the evidence of the landlord that they did not authorize the tenant to do work for them, for which they should be compensated. None the less, I accept that the tenant performed or arranged for the ceiling fan installation as well as for the install of the keyless entry door lock, all which required some of the tenant's time. Therefore, in this matter I grant the tenant *nominal* compensation for their labour in the amount of **$50.00**.

I find the tenant has not provided evidence they suffered a wages loss of 3 hours.
Therefore I **dismiss** this portion of their claim.

Generally, the Act does not extend the right to a roommate nor allows the prohibition of same; and generally, a landlord cannot end a tenancy because a new person or roommate joins the rental unit. However, the tenancy agreement can state the number of persons permitted to reside in the rental unit and what occurs in that event, such as an increase to the rent. But moreover, I find that the tenant has not satisfied any of the 4 test established by Section 7 of the Act in respect to their claim for prospective revenue loss for not having a roommate. As a result, I **dismiss** this portion of the tenant's claim.

The security deposit held in trust will be offset from the awards made herein. Calculation for Monetary Order is a follows.

landlord's award ($45.00 + $425.00 + $100.00)	$570.00
tenant's award ($100.00 + $350.00 + $50.00 + $50.00)	*-$550.00*
Subtotal: to landlord	***$20.00***
Minus security deposit held in trust by landlord	*-$825.00*
Monetary Order to tenant	**($805.00)**

Conclusion

I Order the landlord may retain $20.00 from the tenant's security deposit and return the balance of $805.00 to the tenant, forthwith.

To perfect the above Order **I grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$805.00.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

The parties' respective applications have been granted in their relevant part.

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: July 12, 2017

Residential Tenancy Branch