Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MSD, FF (Landlord's Application)
MNDC, MNSD, FF (Tenant's Application)

Introduction

This hearing reconvened as a Review Hearing.

The original hearing convened before me as a result of cross applications. In the Landlord's Application filed August 12, 2016 the Landlord sought monetary compensation for unpaid rent, damage to and cleaning of the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee. In the Tenant's Application for Dispute Resolution filed October 12, 2016 the Tenant sought return of double her security and key deposit and recovery of the filing fee.

The hearing was conducted by teleconference on February 9, 2017 and March 13, 2017. Both parties called into the hearing on February 9, 2017. On March 13, 2017, the date the hearing reconvened, only the Tenant and her witness called in.

At the March 13, 2017 hearing, the Tenant was given a full opportunity to be heard on the merits of her claims, to present her affirmed testimony, to present her evidence orally and in written and documentary form, and make submissions to me.

By Decision dated March 13, 2017, I dismissed the Landlord's claims and granted the Tenant's request for return of the deposits paid as well as recovery of her filing fee.

The Landlord applied for and was granted Review Consideration of my Decision on the basis that she was unable to attend the hearing. The Review Consideration Decision of March 13, 2017 must be read in conjunction with this my Review Hearing Decision.

The telephone conference Review Hearing reconvened on May 18, 2017. The hearing did not complete within the scheduled time and was adjourned to August 17, 2017. Both parties called into the May 18, 2017 and August 17, 2017 hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter—Landlord's Evidence

The Landlord stated that she submitted evidence on April 12, 2017, which she claimed showed the damage to the countertops as well as receipts for the cost to repair the related damage. That evidence was not before me. The Tenant confirmed that the Landlord provided her an additional 12 pages of evidence by registered mail which she received at the same time she received the Notice of the Review Hearing.

The Landlord stated that she ordered the kitchen countertop in December of 2016, but there were issues with the ones she ordered and as such they were not installed before the February 9, 2017 hearing.

In her application for Review Consideration the Landlord wrote that she would have provided additional evidence regarding the countertops in the form of photos, quotes and testimony from her witness. However, Arbitrator Lee, in his Review Consideration Decision dated April 7, 2017 specifically ordered "No further documentary evidence may be submitted by either party". Accordingly, I decline to consider this documentary evidence. I found the Landlord was able to provide testimony related to the countertops; however I find that the documents submitted on April 12, 2017 are not admissible.

Save and except for the foregoing, no issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's deposits?

3. Should either party recover the filing fee?

Background and Evidence

As noted, this hearing convened as a review hearing. The Landlord failed to attend the second day of the original hearing and consequently her application was dismissed. She was granted review consideration and the hearing reconvened on May 18, 2017.

At the May 18, 2017 hearing, I reviewed the Landlord's testimony from the February 9, 2017 hearing with all present and gave the Landlord the opportunity to confirm, deny, or amend the following evidence given:

The Landlord stated that the Tenant initially moved into the rental unit on March 2013. Introduced in evidence was a copy of a Move in Condition Inspection Report which the Landlord confirmed she filled out after the "walk through". She confirmed that she did not have the form with her when she did the walk through and after filling it out she asked the Tenant to review the document and get back to her with any comments or concerns. The Landlord stated that the Tenant did not respond to her request. She stated that the Tenant was busy.

The Landlord further stated that the Landlord gave the Tenant the Move In Condition Inspection Report form again in October of 2013 and again the Tenant did not sign it. The Landlord stated that in December the Tenant finally signed the move in condition inspection report.

The Landlord testified that the original tenancy ended in September 30, 2014. The Tenant then signed another residential tenancy agreement providing that the tenancy began October 1, 2014. Monthly rent was payable in the amount of $1,600.00 and the Tenant paid a security deposit of $800.00 on October 1, 2014.

The Landlord confirmed that the second tenancy ended on July 31, 2016. She confirmed that the Tenant gave written notice to end her tenancy on July 26, 2016.
A copy of this letter was provided at page 47 of the Landlord's materials.

The Landlord stated that a move out condition inspection report was conducted at the time. A copy of that report was provided in evidence at page 80-82 of the Landlord's materials.

The Landlord claimed she did not rent the rental unit until September 1, 2016. She confirmed that she rented the rental unit for $2,000.00.

In support of her claim the Landlord submitted a Monetary Orders Worksheet wherein she sought the following:

Unpaid rent for August 2016	$1,600.00
Cleaning costs	$600.00
Cleaning of blinds, replacement and re-installation	$420.00
Painting costs	$1,200.00
Repair damaged hardwood floors	$2,400.00
Replacement of damaged kitchen countertop	$3,500.00
Locksmith	$250.00
Towel rack installation	$80.00
Replacement of light bulbs and cleaning of light fixtures	$50.00
Filing fee	$100.00
TOTAL	$10,200.00

The Landlord introduced in evidence a receipt dated August 3, 2016 in the amount of $415.80 for cleaning costs. Also introduced in evidence were photos of the rental unit.

The Landlord stated that the Tenant simply moved her personal belongings and did not clean the rental unit.

The Landlord also testified that cleaning was required outside of the rental unit. She claimed to have paid her son $60.00 for the clean-up around the building. In support she provided 20 photos of the exterior as well as a statement from her son confirming the work required. She also provided copies of text messages she sent to the Tenant regarding the disposal of her items.

In terms of her claim for the cost to clean replace and reinstall the blinds the Landlord submitted that when the tenancy began in 2013 the Landlord had the blinds cleaned. She stated that she replaced two sets of blinds during the tenancy in 2015. She further submitted that when the tenancy ended in July of 2016 the Landlord had a company come and take care of the blinds again. In her materials the Landlord submitted a receipt for $281.40 for this cost. The Landlord also submitted a photo confirming that two sets of blinds were damaged at the end of the tenancy.

The Landlord also confirmed that the tenancy agreement provided that the Tenant was to clean the blinds at the end of the tenancy.

The Landlord testified that the rental unit was painted in February of 2013. She stated that the Tenant was the first renter after the renovations. The Landlord submitted that there were countless numbers of holes in every wall when the tenancy ended. In support the Landlord submitted eight photos of the rental unit taken on the day of the move out inspection; these photos show that the Landlord put green painters tape to show each nail hole. She confirmed that she put the painter tape up when she was doing the move out inspection with the Tenant.

The Landlord confirmed the above evidence as true to the best of her knowledge and belief.

At the hearing on May 18, 2017 the Landlord continued her testimony and submissions in respect of her claim as follows.

The Landlord testified that when the Tenant moved in the floors had been buffed and polished with one coat of varnish. She stated that when the Tenant moved out on July 31, 2016, there were a number of scratches in the living room, dining room, hallway and bedroom. The Landlord submitted seven pages of photos to show this damage to the rental unit floors.

The Landlord clarified that on her monetary claim she originally claimed $2,400.00 for the cost of repairs to the floor because the repair that was done to the flooring in August 2016 was a temporary “band aid solution”. She stated that the wood was scratched to the bare wood and she was not able to do a more comprehensive repair as needed. She stated that they were only able to do buffing and one coat of varnish at a cost of $593.25. In support she provided an invoice wherein the writer notes that the floors required sanding and refinishing at a cost of $2.50 per foot for a total of $1,483.13. The Landlord stated that she has not incurred the cost to refinish the floors as to do so would require vacant possession and currently the unit has been re-rented.

The Landlord stated that the Tenant admitted to the damage, but blamed her movers. The Landlord claimed this was not the case, as evidence by a letter submitted by the Landlord from the movers wherein they write they did not damage the floors.

The Landlord also stated that during her tenancies the Tenant had numerous people living in the rental unit such that she used the dining room as a bedroom at times and moved the double bed from the bedroom to the dining room depending on whether the room was being used as a bedroom or dining room. She postulated that this was how the flooring was damaged.

The Landlord further claimed $80.00 as the cost to re-install a towel rack, as well as $50.00 for the replacement of light bulbs and cleaning of light fixtures.

On August 17, 2017 the Landlord continued her testimony as follows. She stated that when the Tenant informed her that she was planning to travel for work, she did discuss renting the unit to the Tenant’s friend S.P. The Landlord stated that she informed the Tenant that she required paperwork and reference checks following which S.P. could move in August 1, 2016. She stated that she asked the Tenant to participate in conversations with S.P., and during a conversation with S.P. he stated that he had lived in the rental unit as June of 2016. The Landlord says that she informed the Tenant S.P. could not sublet as the Tenant had already let him move in without her permission. She further stated that upon doing reference checks for S.P. she found out he had been operating an AirBnB at another rental.

The Landlord also stated that the Tenant was not moving for work but rather she was moving in with her boyfriend and wanted to keep the rental unit “just in case” something happened with her and her boyfriend. The Landlord claimed that S.P. wanted the Tenant to move out so that he could have the apartment for himself such that they clearly did not have an agreement about a sublet.

The Landlord then stated that on July 26, 2016 the Tenant gave written notice to end her tenancy and she moved out on July 31, 2016.

The Landlord testified that the Tenant did not return the original suite key, the mail box key and the dumpster key and that as a result she had a locksmith attend on July 31, 2016 to rekey the locks. She claimed $250.00 for this cost and provided an invoice confirming payment.

The Landlord initially claimed $3,500.00 in compensation for the cost to replace the kitchen countertop which she claims was damaged by the Tenant; she stated that when she filed for Dispute Resolution she claimed $3,500.00 for the counters as she had never had a countertop damaged and did not know the cost. She further stated that the countertop was a special order and did not arrive until around Easter 2017 such that she did not have the receipt at the time she applied for Dispute Resolution. She confirmed that she paid $1,123.60 to replace the countertop including material costs of $601.96; labour costs of $414.54; and, cleaning costs in the amount of $107.10.

The Landlord stated that when the Tenant moved into the rental unit in 2013 the countertop was not damaged. She further stated that to her knowledge the countertop was approximately 10 years old at the time the tenancy ended as she was informed the kitchen was renovated for the previous tenant in 2005 or 2006. In support she relied on the move in condition inspection report for that previous tenant wherein the counters are noted as “brand new”.

The Landlord stated that walls were all painted in February 2013 and the Tenant was there during the renovation as she came to look at the rental unit. The Landlord confirmed that the actual cost to repaint the unit at the end of the tenancy was **$1,119.95**.

During the hearing the Landlord confirmed that some of the amounts claimed on her application were estimates; she clarified that she sought the actual cost during the hearing as follows:

Item	Amount claimed on Application	Actual cost
Unpaid rent for August 2016	$1,600.00	$1,600.00
Cleaning costs	$600.00	$415.80
Cleaning of blinds, replacement and re-installation	$420.00	$281.40
Painting costs	$1,200.00	$1,119.95
Repair damaged hardwood floors	$2,400.00	$593.25 + $1,483.13 (estimated cost to refinish)
Replacement of damaged kitchen countertop	$3,500.00	$1,123.60
Locksmith	$250.00	$237.64
Towel rack installation	$80.00	$85.22
Replacement of light bulbs and cleaning of light fixtures	$50.00	$50.00
Filing fee	$100.00	$100.00

TOTAL	**$10,200.00**	**$7,089.99**

The Landlord also claimed that the Tenant did not pay a $200.00 key deposit as she alleged.

She stated that at one point during the tenancy, another tenant in an unrelated unit had been operating an AirBnB and as a result the locks were changed and special keys (which could not be copied) were given to all tenants. The Landlord provided a copy of the letter she gave to all tenants of the building wherein she informs the Tenants of this. Attached to the letter was a document dated December of 2013 wherein the Tenant signed and acknowledged her agreement that the Landlord could retain $200.00 from her security deposit in the event this special key was not returned.

On August 17, 2017 the Landlord's witness, C.K., testified. He confirmed that he is the Landlord's son and testified as follows. He stated that he was not at the rental unit when the Tenant moved in and confirmed that he was not able to state the date she moved in.

In terms of the condition of the rental unit at the start of the tenancy, C.K. testified as follows. He stated that before the tenancy began there were renovations going on in the rental unit and he was there helping with the renovations and the cleanup. He testified that from his observations the suite was clean and well put together with no damage. He also stated that the blinds were clean when the tenancy began but to his knowledge they were not replaced during the renovation. He also confirmed that the unit was repainted during the renovation as he could "smell the paint" and could see that all the walls had been painted. He testified that the floors were cleaned and there were no visible scratches or damage. He stated that he did not remember whether the floors had been refinished during the renovation or not. He stated that the kitchen countertop was not the original, as the building is over 100 years old, but had been replaced at some point in time prior to the tenancy beginning. He was not able to testify as to the age of the countertop.

In terms of the condition of the rental unit at the end of the tenancy, C.K. testified as follows. He confirmed that he was part of the move out inspection with the Landlord (his mom), as well as the Tenant and her friend. He stated that the rental unit was not clean; he reported that there were cob webs in the corners, rat and mouse droppings behind the stove and fridge as well as food, dust throughout the apartment, and items left in the cupboards. He claimed the blinds had not been cleaned and he observed dust and dirt which had accumulated on the blinds. He that he watched his mother put green tape on the walls where there was damage, which he described as holes and scratches. He reported that he observed "quite a bit of markings in the whole apartment". In terms of an estimate as to how many holes there were in the walls he said "more than just a few" maybe 7-8 on some walls. In terms of the floors, he stated there were quite a few scratches, and some deep ones. He stated that the scratches were fairly long and fairly deep and some of them were up to two feet long as if heavy furniture had been dragged along the floor. In terms of the kitchen countertop, C.K. stated there was some water damage on the countertop near the sink. He stated that the countertop was a laminate on top of a

pressboard. He also stated that in the bathroom there was damage on the wall where it appeared the towel rack had been pulled off. In terms of the light bulbs, C.K. stated that several of the light fixtures had a burned out bulb and the light fixtures were not cleaned. He confirmed that he cleaned the light fixtures.

In terms of the amounts claimed to change the locks, C.K., stated that there was a disagreement between the Tenant and the Landlord about the security deposit and the Tenant refused to return her keys until she received her security deposit. C.K. stated that her friend told the Tenant that she was not able to keep the keys and the Tenant then dropped the keys in the hallway. C.K. stated that he believed the keys that the Tenant left were not the original apartment keys. C.K. stated that she did not return the mailbox key or the dumpster key.

Tenant's Response

The Tenant testified that the tenancy began March 2013. She testified that she paid a security deposit in the amount of $800.00 and a key deposit in the amount of $200.00 for a total of $1,000.00 in deposits paid. She noted that on page 30 of the Landlord's evidence, and on the final page of the tenancy agreement it is acknowledged that she paid a $200.00 key deposit . This is initialled by the parties. She further stated that she gave the Landlord a cheque for this amount but did not obtain a copy in time for the hearing. She also stated that she reviewed her bank records and confirmed the $200.00 cheque was cashed by the Landlord and the funds were taken from her account on October 13, 2014.

The Tenant stated that the Landlord did not perform a move in condition inspection as required by the *Residential Tenancy Act* and the *Residential Tenancy Regulation.* She stated that even though the Landlord resided in the same building, the Landlord did not complete the move in inspection until December 1, 2013, as she claimed to be unable due to her foot surgery.

The Tenant stated that when her partner moved from the rental unit in September of 2014, the Landlord asked her to sign a new tenancy agreement providing that the tenancy began October 1, 2014.

The Tenant testified that when her partner moved out of the rental unit in October of 2014, the Landlord also asked the Tenant participate in a new condition inspection report. The Tenant submitted that this document clearly indicated the damage to the counters at the time the tenancy began. She stated that she was very surprised when she received the Landlord's Application for Dispute Resolution as most of the claims she made related to damage which existed at the start of the tenancy.

The Tenant confirmed that tenancy ended on July 31, 2016.

She confirmed that she indicated on her application that she was seeking the sum of $1,800.00 as she sought return of double her security deposit (which she paid in the amount of $800.00) in addition to $200.00 for a key deposit.

The Tenant testified that when she moved from the rental unit the Landlord failed to return the deposits. She stated that she provided her forwarding address on the move out condition inspection report. The Tenant further stated that the Landlord failed to provide her a copy of the report until she received the Landlord's application materials.

The Tenant also testified that she sought return of the filing fee paid in the amount of $100.00.

When the hearing reconvened on August 17, 2017 the Tenant continued her testimony.

In terms of the Landlord's request for unpaid rent for August 2016, the Tenant stated that on July 1, 2016 she spoke with the Landlord about the fact that she was going to be leaving for three months for work and travel and that she wanted to sublease the rental unit to her friend, S.P. She stated that the Landlord told her that she would need a request in writing to sublet the rental unit. The Tenant further testified on July 4, 2016 she left a note with the Landlord to request to sublease the rental unit to S.P. The Tenant provided a copy of this note on page 6 of her evidence:

The Tenant further stated that she then had a couple of conversations with the Landlord about subletting the rental unit to S.P. The Tenant stated that the Landlord required more documentation from S.P. and as soon as she got this documentation and did a reference check she would approve him.

The Tenant stated that she let S.P. stay with her as a guest as he was going through a "transition period" while he was awaiting approval to sublet the rental unit. The Tenant submitted that the Landlord believed the Tenant had already allowed S.P. to move in and in retaliation decided not to rent to him.

The Tenant stated that on July 28, 2016 after the Landlord declined the Tenant's request to sublet the rental unit to S.P., she gave S.P. an application to rent the unit and attempted to rent the unit to S.P. at $2,000.00 per month rather than the $1,600.00 the Tenant was paying. The Tenant stated that to her knowledge the Landlord and S.P. had a couple conversations because on Thursday, July 28, 2016 she gave him the application and told him that she was going to pick up the form from S.P. the following day.

In response to the Landlord's claim of $600.00 for cleaning, the Tenant stated that she had the rental unit cleaned on the 15th, but not on the day she moved (a copy of this receipt was provided in evidence). The Tenant further stated that she agreed that she did not clean behind the stove or fridge. The Tenant stated that the reason she did not have her cleaning lady clean that area is because those appliances were not on roller and she did not want to damage the

floors. The Tenant also noted that in the *Policy Guidelines* a tenant is not responsible for cleaning behind appliances if those appliances are not on rollers. The Tenant confirmed she is disputing the $600.00 claim and stated that the photos submitted by the Landlord show that the rental unit was in fact clean.

In response to the Landlord's claim regarding cleaning of the blinds the Tenant stated that the blinds were wiped but not professionally cleaned. The Tenant stated that she believed the blinds were approximately 13 years old at the time the tenancy began as they were yellow. She further stated that to her knowledge the blinds did not look as though they had been professionally cleaned when she moved in.

In response to the Landlord's claim for paint, the Tenant stated that the unit was painted just prior to the tenancy beginning as the Landlord stated that the previous renter had been there for 13 years. The Tenant confirmed that she moved in March 2013 such that she believed the unit had been painted in January or February of 2013. The Tenant stated that the photos submitted by the Landlord show that the walls were not damaged beyond reasonable wear and tear over the three and a half years she was in the rental unit. The Tenant stated that the photos submitted by the Landlord show green tape on the walls, indicating nail holes, but no damage.

In response to the Landlord's claim regarding the flooring the Tenant stated that she did not "notice" damage to the floors. She noted that the floors were 100 years old. She also stated that she hired professional movers and this is the only way she can imagine the floors would have been scuffed at any time. The Tenant stated that the floors were rebuffed, not repaired, and this seems to be what the Landlord does and to the Tenant it seems like a maintenance thing the Landlord does whenever a tenancy begins. The Tenant stated that she did not see any significant damage in any of the photos submitted by the Landlord.

In response to the Landlord's claim for the replacement cost of the kitchen counter the Tenant stated that on the condition inspection report conducted in October 1, 2014, it is noted that the countertops are water damaged. The Tenant stated that at the time they did the move in inspection, the Tenant noted that there was water leaking from the sink and was damaging the countertop. The Tenant stated that the Landlord then wrote "water damage" on the report. The Tenant submitted that she should not be responsible for the cost to make such repairs.

In response to the Landlord's claim for the cost for the locksmith the Tenant stated that the lock had been changed on the dumpster approximately six days before she left and she never received a new key. The Tenant stated that she did lose the mailbox key. The Tenant confirmed that she was willing to pay the cost of the mailbox key, but the Landlord did not provide sufficient details for her to determine what that cost would be.

In response to the Landlord's claim for the cost to install the towel rack the Tenant stated that it had fallen off at one point, and she had a friend reinstall it and repair the holes in the wall. The Tenant claimed she had asked the Landlord to assist with this and the Landlord responded that

it was the Tenant's responsibility. The Tenant stated that the towel rack was there when she moved out.

In response to the Landlord's claim for replacement of the light bulbs the Tenant stated that all the lights worked, but she did not check to see if all the bulbs were working.

In response to the Landlord's claim regarding cleaning the light fixtures the Tenant stated that she did not clean the fixtures when she moved out, although she did clean them during her tenancy.

Landlord's Reply

In reply the Landlord stated as follows; she claimed that there were two towel racks in the bathroom and at the tenancy one was missing. She noted this was clear at picture 8 on page 103 of her material.

The Landlord stated that the garbage company did not change the key to the dumpster as alleged by the Tenant.

The Landlord confirmed that the cost to replace the mail lock was included in the service call and she did not separate these costs.

The Landlord also noted that the Tenant had the rental unit cleaned two weeks prior to moving out.

The Landlord also stated that the fridge is on rollers and her son would have helped the Tenant move it, had she asked.

The Landlord confirmed that she gave the Tenant's friend, S.P. the application to rent the unit, and intended to meet with him on July 29, 2016 but on that date he was already moving out at the same time as the Tenant. When she asked him about the meeting, S.P. stated that he was not moving in. She further confirmed that the rent she hoped to receive from S.P. was not $2,000.00 but $1,900.00 and this would be a new tenancy as she gave him the application *after* the Tenant had already given her notice on July 26, 2016.

The Landlord stated that the tenancy agreement was filled out ahead of time and she did not notice the part about the $200.00 key deposit.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

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

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act,* which provide as follows:

> **Tenant's notice**
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> **45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
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> (a) is not earlier than one month after the date the landlord receives the notice, and
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> (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
>
> (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find that the Tenant gave notice to end her tenancy on July 26, 2016. Pursuant to the above the effective date of this notice was August 31, 2016. While it is clear the parties made some efforts to have the Tenant sublet her tenancy to her friend this was not finalized. Accordingly, the Tenant is responsible for the August 2016 rent and I award the Landlord recovery in the **$1,600.00** amount claimed.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

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.

The Landlord claims the Tenant did not clean the rental unit as required. The Tenant testified that she had the rental unit cleaned professionally on July 15, 2016, some two weeks prior to the end of her tenancy, and that she personally cleaned the unit on the day she moved out. The Tenant conceded that she did not clean behind the stove or refrigerator; although she stated that the reason she did not clean that area is because those appliances were not on roller and she did not want to damage the floors. The Landlord testified that these appliances were on rollers, and that in any case her son would have assisted the Tenant in moving them for the purposes of cleaning.

The parties agreed that the rental unit is over 100 years old. The photos of the windows suggest they are original. Although a Tenant is required to clean window sills at the end of the

tenancy, I find it more likely that the marks on the window sills are due to the age of the windows, and not a lack of cleaning.

Section 37 of the *Act* requires that the rental unit be left reasonably clean. The photos of the rental unit depict the rental unit as being left reasonably clean, save and except for behind the stove and refrigerator. It appears the Landlord expected the Tenant to clean to a higher standard than that required by the legislation; for example, the Landlord submitted a photo of the sink with the notation "dirty bathroom sink", yet the photo shows the sink was clean. A Landlord may choose to clean a rental unit to a higher standard, however, any related costs may not be fully recoverable.

I accept that some cleaning was required behind the stove and refrigerator and I therefore award the Landlord the nominal sum of **$50.00** for cleaning.

I accept the Landlord's evidence that she had the blinds professionally cleaned at the start of the tenancy. The Tenant conceded that at the end of the tenancy the blinds were wiped but not professionally cleaned. Paragraph 23 of the tenancy agreement provides that the Tenant must have the blinds professionally cleaned at the end of the tenancy in the event they were professionally cleaned when the tenancy began.
I therefore award the Landlord the **$281.40** claimed for the cost to clean the blinds.

The photos submitted by the Landlord indicate the Tenant hung pictures on the wall of the rental unit. The Landlord indicated the holes by placing tape on the walls during the move out condition inspection. The Landlord's witness confirmed that most walls had some holes, and some had as many as 7-8.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises addresses the issue of nail holes and provides as follows:

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

I find, based on the photos submitted and the evidence of the Landlord's witness, that the Tenant did not put an excessive number of nail holes, or cause damage to the rental unit walls over and above normal wear and tear. I therefore find the Tenant is not responsible for the painting costs.

Further, *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* provides in part as follows:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
>
> If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements and provides that interior paint has a useful building life of four years. The Landlord's evidence was that the rental unit had been painted in February of 2013 such that the paint was approximately three and a half years old. As such, I find that the interior paint was nearing the end of its useful building life in any case due to the duration of the tenancy.

For the above reasons, I dismiss the Landlord's claim for compensation for painting costs.

The photos submitted by the Landlord indicate the hardwood flooring was scratched at the end of the tenancy. I accept the Landlord's evidence that she had the floors buffed and polished with one coat of varnish when the tenancy began. I also accept her evidence that she had repeated this procedure at the end of the tenancy at a cost of $593.25. The Landlord sought compensation for the additional cost of $1,483.13 representing the estimated amount to have the floors *refinished*. The receipt submitted by the Landlord from the company who buffed and polished the floors indicates such work would "totally fix [the] scratches". The Tenant testified that she did not damage the flooring, but postulated that her movers may have scratched the floors when moving her furniture out of the rental.

It is clear these floors have been well maintained over the years. While the home is 100 years old, the original hardwood flooring remains. Consequently, the 20 year life span of hardwood flooring as provided for in *Policy Guideline 40* is of limited applicability. That said, it is likely the flooring has survived due to regular maintenance including regular rebuffing and polishing, as well as more extensive refinishing. The Landlord failed to advise as to when the floors were last *refinished* to the extent she proposes. As such, I am unable to find that proposed refinishing is required as a result of damage caused by the Tenant in this tenancy, or if the flooring was due for more extensive maintenance in any event of the tenancy.

For these reasons I dismiss the Landlord's claim for the estimated cost to refinish the floors and I award her the **$593.25** claimed for buffing and polishing.

The Landlord sought the sum of $1,123.60 for the cost to replace the damaged countertop. I accept her testimony that she incurred this cost. The Tenant claimed the countertop damage existed at the start of the tenancy and suggested this was noted on the move in condition inspection report dated October 2014. Notably, the report makes no mention of water damage to the counters as suggested by the Tenant.

While it is always difficult to reconcile conflicting testimony, I find it unlikely the parties would not have noted the pre-existing damage to the countertop when the move in condition inspection report was completed. Accordingly, I find it more likely the counters were damaged during the tenancy.

The Landlord estimated that the countertop was approximately 10 years old at the time the tenancy ended testifying that she was informed the kitchen was renovated for the previous tenant in 2005 or 2006. *Residential Tenancy Policy Guideline 40* provides that countertops have a useful building life of 25 years. I therefore discount the amount claimed by 40% representing the age of the counters and award the Landlord **$674.16** for the cost to replace the countertops.

Section 37(2)(b) requires a Tenant to return all keys to the Landlord.

The Landlord claimed $250.00 for the services of a locksmith as she alleged the Tenant failed to return the original key, the dumpster key and the mail key. The Tenant conceded she lost the mail key, but claimed she returned the original key and did not have a copy of the new dumpster key to return as the lock had been changed just prior to the tenancy ending. The Landlord stated that the dumpster key had not been changed. The Landlord's witness testified that on the day the tenancy ended the parties had a disagreement about the security deposit and keys and that this culminated in the Tenant dropping her keys in the hallway.

I find it likely that the Tenant returned the key to the rental unit, but failed to return the dumpster key and mail key. The receipt submitted by the Landlord does not provide a breakdown of the costs related to each key. I therefore award the Landlord recovery of 2/3 of the $250.00 amount claimed, in the amount of **$166.66** representing costs for the mail key and dumpster key**.**

Notably, section 25 of the *Act* provides that a Landlord is responsible for the cost to rekey or alter locks and provides as follows:

> **25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
>
> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
>
> (b) pay all costs associated with the changes under paragraph (a).
>
> (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Based on the photos submitted by the Landlord, and her testimony I find it likely one of the bathroom towel racks was missing at the end of the tenancy and I therefore award the Landlord the **$80.00** claimed to replace the towel rack.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides that a Tenant is responsible for replacing light bulbs during their tenancy. The Tenant stated that the lights worked, but she did not check to see if all the bulbs were working. I accept the Landlord's evidence that the Tenant failed to replace the burned out light bulbs and I therefore find The Landlord is entitled to recovery of the associated costs in the amount of **$50.00**.

The Tenant sought return of her security deposit and key deposit. Section 4 of the *Residential Tenancy Act* defines a security deposit as follows:

> **"security deposit"** means money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:
>
> (a) post-dated cheques for rent;
>
> (b) a pet damage deposit;
>
> (c) a fee prescribed under section 97 (2) (k) *[regulations in relation to fees]*;

The parties disagreed as to whether a key deposit was paid. On the residential tenancy agreement, signed September 9, 2014, and introduced in evidence by the Landlord, the parties acknowledge the Tenant paid a key deposit in the amount of $200.00. The Landlord testified that she did not recall this and stated that the Tenant did not pay such a deposit.

Based on the evidence before me, I find it more likely the Tenant paid such a key deposit. I further find that the key deposit of $200.00 meets the above definition such that I find the Tenant paid $1,000.00 as a security deposit.

I will now address the Tenant's claim for return of double the deposits paid.

Section 38 of the *Residential Tenancy Act* deals with return of security deposits provides as follows:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:

(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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the Tenant’s deposits.

The evidence before me indicates the move in condition inspection report was not completed in accordance with sections 23(1) of the *Residential Tenancy Act* which provides as follows:

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

The Landlord testified that she did not have the form with her when she did the initial “walk through” and completed it after the inspection was done and without the Tenant present. She further testified that the report was not signed until months after the tenancy began. This is also contrary to section 18 of the *Regulations* which provides as follows:

> **Condition inspection report**
>
> **18** (1) The landlord must give the tenant a copy of the signed condition inspection report
>
> (a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and
>
> (b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of
>
> (i) the date the condition inspection is completed, and
>
> (ii) the date the landlord receives the tenant's forwarding address in writing.
>
> (2) The landlord must use a service method described in section 88 of the Act *[service of documents]*.

I also accept the Tenant’s testimony that the Landlord failed to provide her with a copy of the signed move out condition inspection report.

Sections 24(2)(c) and 36(2)(c) of the *Act* read as follows:

> **24** (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.
>
> **36** (2) Unless the tenant has abandoned the rental unit, the right of the 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) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I find that the Landlord has extinguished her right to claim against the Tenant’s security deposit as it relates to damage.

However, the Landlord’s retains a right to claim for loss of rent.

Rules 2.1 and 2.6 of the *Residential Tenancy Branch Rules of Procedure* provides as follows.

> **Rule 2 – Making a claim**
> **2.1 Starting an Application for Dispute Resolution**
> To make a claim, a person must complete and submit an Application for Dispute Resolution.
>
> **2.6 Point at which an application is considered to have been made**
> The Application for Dispute Resolution has been made when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.

The Landlord applied for dispute resolution on August 12, 2016. I therefore find that the Landlord made her application as required by section 38(1) such that I decline the Tenant's request that I double the security deposit pursuant to section 38(6).

As the parties have enjoyed divided success, I find they should each bear the cost of their filing fee.

Conclusion

Pursuant to section 82(3) of the *Residential Tenancy Ac*, my Decision and Monetary Order made April 7, 2017 are hereby set aside and of no force and effect. This Decision and resulting Monetary Order replaces my Decision and Order made April 7, 2017.

The Landlord is entitled to compensation in the amount of **$3,495.47** calculated as follows:

item	**AMOUNT AWARDED**
Unpaid rent for August 2016	$1,600.00
Cleaning costs	$50.00
Cleaning of blinds, replacement and re-installation	$281.40
Repair damaged hardwood floors	$593.25
Replacement of damaged kitchen countertop	$674.16
Locksmith	$166.66
Towel rack installation	$80.00
Replacement of light bulbs and cleaning of light fixtures	$50.00
TOTAL	**$3,495.47**

The Landlord is entitled to retain the Tenant's $1,000.00 security and key deposit in partial satisfaction of the amount awarded and is granted a Monetary Order for the balance due in the amount of **$2,495.47.** The Landlord must serve the Monetary Order on the Tenant and if the

Tenant fails to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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*.

I acknowledge that this Decision is being delivered more than 30 days after the conclusion of the hearing. This is in part due to this hearing reconvening as a review hearing, the voluminous nature of the parties' evidence, the duration of the hearing (which occupied 294 minutes, or 4.9 hours of hearing time), as well as my annual holidays. I confirm that the validity of my Decision is in no way affected by the fact the Decision has been rendered after the 30 day period provided for in section 77 of the *Act.*

Dated: September 22, 2017

Residential Tenancy Branch