Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution made on July 20, 2017 and amended on October 3, 2017, in which the landlord has requested compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied on August 24, 2017 claiming return of double the $775.00 security deposit and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The parties each confirmed receipt of the hearing documents and evidence within the required time limits.

The tenant submitted evidence on the tenant's application and a second package on the landlord's application. The tenant said the packages were essentially identical but the package submitted on the landlords' application was most current. It was agreed that only the evidence submitted on the landlord's application would be referenced.

Each party confirmed receipt of digital evidence submitted by the other. The landlord had yet to attempt to view the tenant's digital evidence. The tenant was able to view the landlord's digital evidence. The digital evidence was not viewed during the hearing. The parties acknowledged that the digital evidence could be accessed by the arbitrator after the hearing; given there are no technical difficulties.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the tenant entitled to return of double the security deposit or is the landlord entitled to retain the deposit?

Background and Evidence

The tenancy commenced on December 1, 2014; the tenant took possession on November 29, 2014. There is a signed tenancy agreement; a copy was not supplied as evidence.

The landlord confirmed that a move-in condition inspection report was not completed. The parties agreed that this was a brand-new rental unit.

The tenancy ended as the result of a Notice issued for landlord's use of the property. The tenant exercised the right to end the tenancy with 10 days' written Notice and vacated on July 5, 2017. A copy of that letter was submitted as evidence. The letter provided the tenant's forwarding address and offered the landlord July 5, 6, 7, 2017 as possible dates for a condition inspection. There was no dispute that the tenant went on to offer 3 other possible dates for an inspection.

The tenant supplied copies of emails sent between the parties. On July 10, 2017 the landlord sent the tenant an email setting out damages to the rental unit. The tenant said that on July 11, 2017 a request was sent by the landlord requesting an inspection. It was not until July 17, 2017 that they met at the rental unit. The landlord said he could not attend an inspection on any of the dates offered by the tenant.

A move-out condition inspection report was not completed or signed by the parties. The landlord sent the tenant an email setting out the deficiencies from the landlords' perspective.

The landlord stated that when the unit was rented the landlord was not aware of the requirements of the Act in relation to condition inspection reports.

The landlord has made the following claim:

Cleaning 1.5 hours	165.00
Drywall damage – towel hanger	40.00
Repair gate	252.00
Garbage removal	157.50
Replace deadlock	26.25
Replace toilet seat	21.26
Window screen replacement	22.40
Repair stair treads	128.00
TOTAL	812.41

The landlord said he knew the tenant had hired cleaners after vacating, but the unit remained in need of cleaning. The landlord hired a cleaning service that spent 1.5 hours in the unit on July 20, 2017; charging $110.00 per hour. The invoice supplied as evidence indicated that the work was completed to the best of their ability but not all marks on the floors and walls could be removed.

The tenant disagreed that the rental unit was not left in a clean state when the tenancy ended.

There was no dispute that the tenant installed several towel racks and that there were screws in the wall. The tenant said she meant to remove the screws but understood that wall repair was not required as a tenant is entitled to hang some items on walls.

The parties acknowledged there were several text messages sent during the tenancy, asking the tenant not to slam the gate at the back of the property. The landlord said he understood that he could not prove the tenant had caused the gate to be damaged, but the landlord has claimed that the tenant is responsible for the repair cost. The tenant said she, the landlord, a nanny, and two children and another tenant all used the same gate. The tenant denied damaging the gate.

After the tenant's cleaners were in the unit garbage was left on the property. There was also an animal gate and bedframe on the neighbour's property, but the landlord cannot prove the tenant left those items. The landlord supplied a July 6, 2017 invoice for non-garbage removal, referring to clean-up items.

The tenant said that a bed frame was not left on the property; an animal gate was left for disposal. There were 5 to 6 to bags of garbage left on the property. If the tenant had known this would be an issue the garbage would have been removed.

The landlord said the tenant did not return the keys so a new deadbolt was installed within a short period of time of the tenant vacating. A receipt for a previously purchased deadbolt was supplied as evidence of the cost.

The tenant said that before the landlord offered a date for the inspection the tenant had made multiple attempts to arrange an inspection. The tenant vacated and did not want to leave the keys under the mat as that could pose a safety risk. The landlord was not at home at the time the tenant vacated. By the time they met for the inspection the landlord had already changed the lock.

After the tenant vacated the landlord noticed the toilet seat frame was broken. The landlord has supplied an invoice for seat replacement.

The tenant said the toilet seat was the wrong size and eventually broke. The tenant did not complain as it was a minor problem.

A window screen frame was broken and the screen had a tear; the landlord has supplied evidence for the cost of repair.

The tenant said that there were no screens installed at the start of the tenancy. The landlord left the screens with the tenant to install. The tenant agreed that one screen was bent while being installed. Some screens did not fit and were returned to the landlord. The tenant was not sure about the rip referenced by the landlord.

The landlord had to sand and repair the gouged and stained stair treads. The landlord said that the tread damage was beyond normal wear and tear. The landlord has claimed costs for the time spent completing this repair.

The tenant stated that the white laminate showed normal wear and tear, after a tenancy of this length. The tenant does not think the stairs were dirty, but they were scuffed.

After the hearing concluded I was able to view the digital evidence supplied by each party. The move-out inspection was recorded and the landlord had photographs and video of areas that are claimed as dirty and damaged.

Analysis

The landlord has claimed compensation for damage the landlord submits is beyond normal wear and tear, after a tenancy of 2 years and 8 months

Policy guideline #11 suggests that a tenant is responsible to pay for repairs that are caused either deliberately or as the result of neglect.

Section 37(2) of the Act provides:

> *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.*

Residential Tenancy Branchy policy requires a tenant to leave window coverings clean. The digital evidence showed a rental unit that I find appeared to be reasonably clean, save scuffs on the stairs, the window ledges and window coverings. The window coverings were new at the start of the tenancy and at end showed the need for some cleaning.

I have considered the state of the rental unit shown in the digital evidence against the invoice for cleaning. From the evidence before I find that the one half of the time claimed would reasonably cover the cost of wiping the blinds and window sills. The tenant is not required to leave the rental unit in a pristine state; only reasonably clean. From the evidence before me I find, on the balance of probabilities, that the unit was very close to reasonably clean when the tenancy ended. Therefore, I find the landlord is entitled to compensation in the sum of $90.75 for cleaning; the balance claimed is dismissed.

Policy suggests that a tenant may hang a reasonable amount of items on the walls. There was no evidence before me that the tenant hung an unreasonable amount of items. There were a small number of holes in the drywall from towel racks installed by the tenant. Therefore, I find that the claim for wall repair is dismissed.

I have reviewed the evidence before me and find that the landlord is correct; there is no evidence that proves the tenant is responsible for damage to the gate. The landlord did not provide any evidence as to when or specifically how the damage occurred. The landlord may have asked the tenant to be gentle with the gate, but I am not convinced that the repair was required due to the actions of a different user. Therefore, I find that the claim for the gate repair is dismissed.

The landlord provided photographs of the garbage that was removed from the property. Even without the metal bed frame, the landlord incurred the cost for removal of a pick-up load of garbage. The tenant should have expected that a large pile of garbage outside of bins would not be collected by the local garbage removal. Therefore, I find that the landlord is entitled to the cost of garbage removal as claimed.

There was no dispute that the tenant had attempted to set six different dates for a move-out inspection, immediately following the end of tenancy. There was no evidence before me that the landlord attempted to meet with the tenant to collect the keys or request return of the keys. Section 32 of the Act requires a tenant to give the landlord keys at the end of a tenancy and generally this would take place at the time of a move-out inspection. There was no dispute that the tenant took steps to meet with the landlord immediately following the end of the tenancy. There was no evidence that the landlord made any effort to obtain the keys or set the inspection for a time quickly following the end of the tenancy. If the landlord was unable to meet with the tenant the landlord was free to assign an agent to do so. Therefore, as the tenant offered the landlord the keys at the time the landlord agreed to meet for an inspection of the unit I find that the tenant has met the requirement of section 32 of the Act and that the claim for the cost of the deadbolt is dismissed.

There was no evidence before me that the toilet seat bolt broke due to the negligence of the tenant or a guest. The issue was so minor the tenant did not report the problem to the landlord. I find it is just as likely that the bolt broke due to a seat that was not of the correct size for the toilet. Therefore, I find that the claim for the toilet seat is dismissed.

The landlord did not dispute the tenants' submission that the tenant was asked to install the window screens. The fact that a screen was damaged by the tenant cannot result in a cost to the tenant. If the landlord had installed the screens this damage would likely have been avoided. I do find, however, that the tenant's submission on the tear in the screen is less than believable. I can see no other possible cause for the rip in the screen that is shown in the

landlord's evidence than having been caused by the tenant. Therefore I find that the landlord is entitled to partial cost of $10.00 for the tear in the screen; the balance of the claim is dismissed.

I have viewed the digital evidence of the stairs and find on the balance of probabilities that the damage that can be seen is wear and tear caused over a tenancy that lasted close to 3 years. A landlord can expect that wear and tear of this nature will occur. There was no evidence before me that the tenant was required to remove shoes in the unit. In fact during the inspection both parties could be seen wearing shoes in the unit. Therefore, in the absence of evidence of damage that meets the standard beyond normal wear and tear I find that the claim for the stair treads is dismissed.

Therefore, the landlord is entitled to compensation in the sum of $258.25. The balance of the claim is dismissed.

	Claimed	Accepted
Cleaning 1.5 hours	165.00	90.75
Drywall damage – towel hanger	40.00	0
Repair gate	252.00	0
Garbage removal	157.50	157.50
Replace deadlock	26.25	0
Replace toilet seat	21.26	0
Window screen replacement	22.40	10.00
Repair stair treads	128.00	0
TOTAL	$812.41	$258.25

I have then considered the security deposit claim. The landlord has confirmed that a move-in condition inspection report was not completed. There was no dispute that by the time the tenant vacated on July 5, 2017 the landlord had been given the tenant's written forwarding address. The landlord did not return the security deposit to the tenant.

Section 23 of the Act requires the landlord to offer a tenant at least 2 opportunities to complete a move-in condition inspection. Section 24 of the Act determines that a landlords' right to claim against the deposit for damage at the end of a tenancy is extinguished if the landlord failed to comply with section 23 of the Act.

Therefore, I find that the landlord has extinguished the right to claim against the deposit for damage at the end of the tenancy as the landlord failed to complete a move-in condition inspection report. As a result section 38 of the Act applies. Section 38(1) requires a landlord to return the deposit within 15 days of the end of the tenancy or the date the written forwarding address is received; whichever date is the latest.

Pursuant to section 44(1)(d) of the Act I find that the tenancy ended effective July 5, 2017, when the tenant vacated. Therefore, the landlord was required to return the security deposit no later than July 20, 2017.

Section 38(5) of the Act determines that a landlord may not retain the deposit if the right to do so has been extinguished. Section 38(6) of the Act then prohibits a landlord from making a claim against the security deposit and requires the landlord to pay the tenant double the amount

of the deposit should the landlord not return the deposit within 15 days; as set out in section 38(1) of the Act.

Therefore, I find that the landlord is holding a security deposit in the sum of $1,550.00.

As the landlord has succeeded in a claim in the sum of $258.25 I find that this sum may be deducted from the security deposit. Therefore, I find that the tenant is entitled to balance of the security deposit; $1,291.75.

As each application has some merit I find that the filing fee costs are set off against the other.

Based on these determinations I grant the tenant a monetary order for the balance of $1,291.75**.** In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of $258.25. The balance of the claim is dismissed.

The landlord is holding double the security deposit in the sum of $1,550.00.

The sum owed to the landlord is deducted from the security deposit.

The tenant is entitled to return of the balance of the security deposit; $1,291.75.

Filing fee costs are set off against the other.

This decision is final and binding and 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: October 24, 2017

Residential Tenancy Branch