



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER PARK LANE TOWERS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

Subsequent to an Interim Decision of September 28, 2017 rescheduling this matter this hearing was originally convened in response to an application by the landlord made April 27, 2017 for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage and loss, unpaid rent and to recover the filing fee. The application included a request for an Order allowing the landlord to retain the tenant's deposit of the tenancy in partial satisfaction of the monetary claim.

Both parties participated in the hearing. The landlord, landlord's agent and their legal counsel, as well as the Administrator / lawyer (the tenant) for the deceased tenant's estate attended the hearing. Both parties acknowledged receiving all of the document and digital evidence of the other as also before me. 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. 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. The tenancy began March 01, 1989 and its end was brought about by the tenant's suicide realized in early January 2015. I have benefit of the original tenancy agreement. Rent of \$918.00 was payable each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$300.00 which the landlord retains in trust. The tenancy ended April 30, 2017 when the administrator of the tenant's estate provided notice to end pursuant to Section 45 of the Act.

The landlord submitted an Inspection Report for the rental unit of the start of tenancy inspection mutually attended by the tenant and the landlord. The Inspection Report indicates the parties agreed the rental unit was clean, relatively absent of deficiencies and repainted in March 1989. At the end of the tenancy the tenant waived their involvement in the inspection of the unit and authorized the landlord to clean the rental unit and dispose of the tenant's personal possessions and clean out the tenant's locker. The tenant also authorized the landlord to undertake necessary repairs. The landlord conducted an inspection of the rental unit on May 12, 2017 together with their agents but absent the tenant. Resulting from which they crafted their own end of tenancy "details" document, submitted into evidence. The landlord claims they made all necessary repairs and presented the resulting costs, and other charges owed the landlord, to the tenant for settlement. The tenant found the landlord's original 'invoice' in the amount of \$12,551.92 (minus the security deposit), unreasonable and "inflated". The parties were subsequently unable to reconcile differences over the invoiced amount(s) which, according to the parties, augmented an already disputatious relationship. All with the result the 'invoice' remained outstanding.

The landlord ultimately made application for dispute resolution, to which they increased their original claimed losses by \$4000.00 to now in the sum of \$17,031.21.

It will suffice to state here that in the hearing the parties were *forthright* in their less than gracious opinions and feelings about the other. None the less, it did not prevent them from turning their minds to compromise during the hearing and arriving to agreement on multiple

portions of the landlord's claims. The parties agreed in respect to the landlord's claims as follows.

Initial suite clean up of the death / odour removal (Airkem Biohazard)	\$1008.03
Landlord's disposal costs/ tenant's personal effects/ locker contents	\$ 260.00
Resident Manager's time re: disposal of personal effects/ locker contents	\$ 120.00
Resident Manager's time for hallway wall repair due to movers	\$ 105.00
Resident Manager's time supervising removal of tenant's vehicle	\$ 60.00
Rent / parking fee February – April 30, 2017	\$2829.00
Resident Manager's time cleaning oil stain/residue from tenant's vehicle	\$ 104.00
Resident Manager's time/materials/ repair back panel of wine cabinet	\$ 197.00
Labour only portion / cleaning and restoration of suite (materials portion of \$690.00 in dispute)	\$ 770.00
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agreed portions of landlord's claim	\$5453.03

The balance of the landlord's claims represents the following.

The landlord claims the tenant should compensate the landlord for legal fees of \$739.58 incurred by them in order to communicate with (the administrator) regarding the administrator's access to the rental unit. The parties were in disagreement about the administrator's right of access to the rental unit after the death of the tenant. The

landlord testified they were compelled to contact a lawyer because of the administrator's seeming stubbornness. The landlord testified they involved a lawyer in order to resolve their communication impasse regarding the right of access. The administrator testified they are not responsible for the landlord's discretionary cost in this respect as not only unnecessary but insulting, given *they* too are a lawyer. The landlord submitted the legal fees invoice into evidence.

The landlord claims \$3445.16 for refinishing the hardwood flooring in the rental unit. The landlord testified that early in the tenancy the tenant had placed carpeting over the wood flooring. The landlord testified the flooring was newly re-finished shortly before the tenancy started and the tenant covered it with solely underlayment and carpet (no tack strips). They

provided evidence which shows that upon lifting the carpeting some residual underlay apparently remained adhered to the wood floor finish. The landlord's photo image evidence shows the described residue on the wood flooring surface. The tenant argued the landlord should in the least view it as reasonable wear and tear of a 26 year tenancy. The landlord was advised to remove the residual underlay, sand and refinish the flooring by their flooring contractor whom attended to the work.

The landlord seeks loss of revenue in the amount of \$1836.00 for the months of May and June 2015 immediately following the end of tenancy. The landlord claims this is the period in which the landlord remedied the unit toward being able to show and re-rent it. The landlord claims they had to not only deal with repairs and cleaning, but that scheduling of trades accounted for some of the delay. The landlord cited the compromised wine cabinet, floor refinishing, and replacement of a sink, new toilet due to a leaky seal, a leaking kitchen faucet, and wall repairs, as part of the work.

The landlord submitted a photo image of a lavatory sink basin partly chipped and rusted. They testified the sink was at least as old as the tenancy. The landlord submitted receipts for a sink, toilet, and kitchen faucet, miscellaneous materials for plumbing and associated installation labour charges. It is noteworthy that all the

associated receipts are dated in July, August and November 2015 which was challenged by the tenant as these dates were significantly after any period for reparation, but not explained by the landlord. Despite my best efforts I've not been able to accurately reconcile all of the claimed \$690.00 in materials, although it is evident all the receipts in fact total more than \$690.00.

The landlord claims \$50.00 for removing the tenant's affixed electrical extension cords and ancillary electrical wiring under the kitchen cabinetry. The tenant disputed the claim as extravagant.

The landlord claims \$433.44 for replacement of drapery which the landlord testified is stained and has an offensive odour. The landlord provided a photo image of the drapery which they testified were 2 years old at the end of the tenancy. The landlord claims they solely received an all-inclusive verbal quote for the new drapery. The tenant disputed the claim generally. They

testified that cleaning should have removed any odour and there is no evidence to support the amount claimed by the landlord.

The landlord claims *aggravated damages* of \$1000.00 and \$3000.00 for “time spent”. The landlord testified they expended time communicating with (the administrator), the Residential Tenancy Branch, and supervising the movers and various trades involved in this matter. The landlord testified they were repeatedly frustrated by the administrator’s seeming lack of knowledge about estate administration and was difficult to deal with. On an occasion the administrator showed up at the rental unit demanding access and the police were called and the administrator turned away. This caused the landlord undue stress. The administrator responded with their own allegations of ineptitude and insensitivity of the landlord respecting the needs of the deceased tenant’s family at a trying time.

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 photo image 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. In this matter the landlord is claiming the tenant is responsible for *damage*: that is, for breakage or collapse or induced deterioration exceeding reasonable wear and tear under normal circumstances, but moreover through the tenant’s deliberate conduct or negligence.

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 must satisfy each/every component of the test below:

1. *Proof the damage or loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that a claimant has followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

Therefore, the landlord bears the burden of establishing their claims by 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 the loss claimed.

In respect to the landlord's claim for legal fees regarding services for which they contracted, I cannot but be mindful that (the administrator) in this matter is himself a lawyer whom on a balance of probabilities is aptly equipped with capacity to learn and adapt on their own in the face of repeated rebuffs of the landlord. I accept another lawyer may well have played some beneficial role in a time of dispute between the parties but ultimately I find that the landlord contracted for legal services to satisfy their own needs and for their own benefit and the administrator is not responsible for this discretionary cost of the landlord. I fail to see why the tenant's estate should bear the cost of the landlord's choice in this aspect of the matter. I find

the landlord's claim does not meet the test established by Section 7 of the Act. As a result I dismiss this portion of the landlord's claims.

In respect to the landlord's claim for refinishing the hardwood flooring I find **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Finishes > flooring** states the useful life of hardwood flooring finish is 20 years. Given the evidence that the flooring in the rental unit was not refinished since before the start of the 26 year tenancy, I find that even if I were to accept the landlord's claim that the tenant through deliberate or negligent conduct damaged the flooring finish, the mitigated or depreciated

value of the flooring finish would result in an award of \$0.00. As a result I dismiss this portion of the landlord's claims.

I agree with the tenant that the dates for many of the landlord's receipted costs are well past any period the landlord has claimed were used to remediate the rental unit. But regardless of these facts, I find that even if I were to accept the tenant was somehow deliberately responsible for *damaging* the sink or *damaging* a faucet and *damaging* the toilet, versus reasonable wear and tear for a 26 year tenancy, **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Mechanical > Faucets, tubs, toilets and sinks and plumbing fixtures** states that their useful life does not exceed 20 years, rendering the mitigated or depreciated value of these items to \$0.00. As a result I dismiss these portions of the landlord's claims and effectively their claim for materials amounting to \$690.00, for which despite my best efforts I have not been able to fully account within the landlord's evidence.

Given that I have not allowed the above portions of the landlord's claims, as they have not been proven valid, I cannot grant the landlord their full claim for loss of revenue of 2 month's rent. In the alternative, I find it reasonable the landlord required some time after the end of the tenancy to clean and otherwise attend to tasks and remediation for which the tenant was responsible. As a result I grant the landlord loss of revenue in the amount equivalent to one month's rent of **\$918.00.**

I find the landlord's claim for removing the tenant's affixed electrical extension cords and ancillary electrical wiring under the kitchen cabinetry necessary and reasonable and therefore grant the landlord their request for **\$50.00.**

I find that the landlord has not provided sufficient evidence to verify their monetary claim amount for replacement of drapery in the amount of \$433.44. Their claim does not sufficiently meet the test established by Section 7 above. As a result this portion of their claim is dismissed.

I find that the landlord has failed to provide sufficient evidence or any accounting to support their claim for “time spent” in the amount of \$3000.00, vis a vis Section 7 of the Act. Therefore, this portion of their claim is dismissed.

I accept that the circumstances described for this matter, in which the landlord had to deal with the death of a tenant were all, in the least, trying and upsetting. However, while mindful of all the landlord's frustrations in navigating the closure of this tenancy following the tenant's death I am not satisfied by the evidence that the magnitude of the landlord's intangible losses are of such a significant nature to attract special compensation. I am also not satisfied the landlord's aggravating circumstances in this matter were brought about deliberately or through the negligence of the estate administrator, as claimed. I find the landlord has not presented sufficient evidence of a significant loss caused either deliberately or through negligence to garner an award for aggravated damages. As a result I must dismiss this portion of the landlord's claims.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the estate administrator. The security deposit and applicable accrued interest will be offset from the award made herein. Calculation for a Monetary Order is as follows.

Parties' agreed claims on landlord's application / various	\$5453.03
Loss of revenue (May 2015)	\$918.00
Landlord's labour / materials	\$50.00
landlord's filing fee	\$100.00
total of landlord's monetary award	\$6521.03
<i>Less tenant's security deposit and interest in trust</i>	- \$488.52
Monetary Order: landlord	\$6032.51

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 deposit and accrued interest in their entirety in partial satisfaction of their greater award.

I grant the landlord a **Monetary Order** under Section 67 of the Act for the balance in the amount of **\$6032.51**. 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: December 18, 2017

Residential Tenancy Branch