



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 1, 2015 and ended on May 31, 2017 but the tenants did not vacate until June 9, 2017. The tenants were obligated to pay \$2950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1475.00 security deposit and \$1475.00 pet deposit. The landlord testified that written move in and move out condition inspection reports were conducted. The landlord testified that the tenants over held the unit without paying for an extra nine days of occupancy. The landlords testified that they had to change the locks as the tenants did not return the keys. The landlord testified that the tenants testified that the tenants didn't pay the water bill as per their tenancy agreement. The landlord testified that extra cleaning of the interior and exterior of the home was required as the tenants did not leave it reasonably clean. The landlord testified that the tenant did not provide their forwarding address in writing at any time.

The landlord is applying for the following:

1.	City of Kelowna Water Bills	\$867.47
2.	New Lock and Keys & 9 days of rent	1022.85
3.	Lightbulbs	38.26
4.	Carpet Cleaning	238.35
5.	Yard maintenance	400.00
6.	Exterior Window Cleaning	84.00
7.	Filing Fee	100.00
8.		
9.		
10.		
11.		
	Total	\$2750.93

The tenant gave the following testimony. The tenant testified that he adamantly disputes all of the landlords' claims. The tenant testified that the home was left in better shape than when they moved in. The tenant testified that even though he didn't give his forwarding address in writing, he still thought he could receive the return of double his deposits.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Water Bill - \$867.47

The tenant testified that he wasn't aware that he was responsible for this cost. The landlord submitted a signed copy of the tenancy agreement that clearly reflects that the tenant is responsible for this cost. Based on the tenancy agreement and the bills provided, I find that the landlord is entitled to \$867.47.

New Locks, Keys and Rent for June 1-9, 2017 – \$1022.85.

The tenant testified that the landlord was selling the home and that no one was moving in. The tenant testified that they had been doing some extra cleaning and work around the home to assist the landlord. The tenant testified that the landlord did not advise him at any time that he needed to vacate by a certain date. The tenant testified that he moved all of his belongings out on June 5, 2017 from the inside of the home. The tenant testified that there some items on the property but those were removed by June 9, 2017. The tenant testified that he planned to return the keys to the landlord but the landlord had already changed the locks shortly after he vacated on June 9, 2017.

The landlord testified that they were trying to be nice with the tenant and didn't tell him that he had to leave. The landlord testified that it was "a lesson learned". The landlord testified that she never requested the return of the keys or advised the tenant that she was seeking some monetary compensation for remaining on the property.

As noted above, a party must satisfy all four factors to be successful in making a claim. I find that the landlord failed to mitigate the loss as they never advised or informed the tenant of their concerns. In addition, the landlord has not satisfied me that there was negligence or recklessness on the part of the tenants, accordingly; I dismiss this portion of the landlords claim.

Lightbulbs – \$38.26

The tenant testified that "I don't think we left that many burnt out lights". The landlord provided the condition inspection report and the receipt to support their claim. Based on the documentation before me I find that that landlord is entitled to \$38.26.

Carpet cleaning – \$238.35

The tenant testified that he cleaned the carpets but was unable to provide a receipt to support that. The landlord provided a copy of the receipt and the condition inspection report to support their position. Residential Tenancy Policy Guideline 1 states a tenant is to shampoo the carpets regardless of the length of the tenancy when they have pets. The tenant lived in the unit for two years and had pets. Based on the above I find that the landlord is entitled to \$238.35.

Yard Care - \$400.00

The tenant testified that he left the yard in better condition than when he took possession. The tenant testified that much of what the landlord is claiming is pre-existing damage. The landlord submitted the condition inspection report, the tenancy agreement that states the tenant is responsible for cutting the lawn and weeding, and the receipt to support the amount as claimed. Based on the documentation, I am satisfied that the landlord is entitled to \$400.00.

Exterior Window Cleaning - \$84.00

Residential Tenancy Policy Guideline 1 states that the cleaning of the exterior windows is the landlords' responsibility; accordingly I dismiss this portion of the landlords' application.

I address the tenants claim and my findings as follows.

The tenant requests the return of double his security and pet deposits. The tenant testified that he should be given double since the landlord did not return the original deposits within fifteen days of moving out. The tenant testified that he did not provide the landlord with his forwarding address in writing at any time prior to filing an application. The tenant testified that when he served the landlord the Notice of Hearing package that was the first time he provided his forwarding address. Section 38 of the Act address this issue as follows

Section 38 (1) says that 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,

As the tenant did not provide his forwarding address, the doubling provision was not triggered, and therefore he is not entitled to the return of double his deposits.

As neither party has been fully successful in their application, they must each bear the cost of the filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Water Bill	\$867.47
Lightbulbs	\$ 38.26
Carpet Cleaning	\$238.35
Yard Care	\$400.00
	\$
	\$
Total:	\$1544.08

The landlord has established a claim for \$1544.08. I order that the landlord retain \$1544.08 from the deposits in full satisfaction of the claim. The remaining \$1405.92 must be returned to the tenant. I grant the tenant an order under section 67 for the balance due of \$1405.92. This order may be filed in the Small Claims 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*.

Dated: January 18, 2018

Residential Tenancy Branch