



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was convened in response to cross-applications by the parties. The landlord filed their application August 14, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

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

The tenant filed their application December 30, 2017 for Orders as follows;

4. An Order for return of security deposit - Section 38
5. A monetary Order for damage / loss – Section 67
6. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were ultimately provided opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. The parties were advised that only *relevant* evidence would be considered in the Decision. The parties were given opportunity to present *relevant* testimony, and make *relevant* submissions of evidence. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed evidence in this matter is as follows. The hearing had benefit of the written Tenancy Agreement. The tenancy started October 01, 2015 as a written tenancy agreement. The tenant provided notice to vacate dated June 25, 2017. The tenancy ended earlier than stipulated on the tenant's notice upon them removing all their belongings from the unit on July 16, 2017.

The payable monthly rent was in the amount of \$950.00 due in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$450.00 which the landlord retains in trust. The parties agree there was a *move in* condition inspection conducted at the outset of the tenancy performed in accordance with the Act. The parties acknowledged they did not conduct a mutual condition inspection at the end of the tenancy. On July 19, 2017 the landlord testified they learned the tenant had vacated earlier than originally notified and began to prepare the unit for re-renting so as to mitigate losses of revenue, which the landlord testified was for the benefit of the tenant as it was clear the rental unit would require some remediation. They did not have a forwarding address but had telephone access with the tenant. The landlord testified that despite repeated efforts in order to establish contact with the tenant they did not respond until July 30, 2017. The tenant testified that on July 28, 2017 they entered the rental unit and cleaned it before returning the keys in the landlord's mailbox. The tenant provided evidence acknowledging they knew they were required to do a mutual move out inspection with the landlord at the end of the tenancy. In the absence of contact from the tenant, on July 29, 2017 the landlord determined to do an inspection alone and completed the Condition Inspection Report (CIR). Despite the parties coming together on July 31, 2017 the landlord was in midst of refurbishing the hardwood flooring and the parties were unable to physically enter the suite to conduct an inspection. The landlord acknowledged they did not offer the tenant a second or subsequent opportunity to conduct a mutual *move out* inspection given the unit was now remedied and would eminently be reoccupied. The parties agreed the landlord received the tenant's forwarding address August 01, 2017. The landlord applied for dispute resolution August 14, 2017.

The landlord testified that in their inspection of the unit they determined the tenant left the rental unit insufficiently clean, with excessive wear and tear, and damaged. The tenant did not wholly dispute the landlord's claims, but that they had cleaned the rental unit to a satisfactory standard. The landlord provided photo images depicting the condition of the rental unit on July 29, 2017.

Landlord's application

The landlord seeks costs for general cleaning of \$150.00, and professional cleaning of the blinds as required by the tenancy agreement in the amount of \$116.00. The landlord provided evidence that the kitchen countertop had been painted over, with which the tenant agreed despite not having obtained permission to do so. The landlord testified the laminate covered wood countertop was 50 years old and they determined to replace it, for which the landlord is claiming the cost of \$1260.00. The landlord provided evidence that the bathroom fixtures of towel bar and toilet paper holder had been painted over, with which the tenant agreed despite not having obtained permission to do so. The landlord testified they replaced the fixtures for which the landlord is claiming the cost of \$64.13. The parties agreed the tenant replaced the cabinetry door knobs with single pulls and patched the doors. The landlord argued the tenant left the walls in the suite damaged by poor patching and repainting, for which they provided a series of photo images. The tenant argued the wall anomalies should be considered normal wear and tear. The landlord seeks the cost of repairing the kitchen and bathroom cabinet doors, the claimed wall damage and repainting, including cabinet knobs, in the sum of \$920.00 (\$980.00 + \$30.00). The landlord also seeks the cost of paint in the amount of \$108.95. The landlord further claims that the tenant scratched the hardwood flooring and that the flooring appeared excessively worn in comparison to its condition as reflected in the move in portion of the CIR. The tenant did not dispute the landlord's testimony the tenant used the floor space to refurbish furniture however claimed they considered any anomalies in the flooring as reasonable wear and tear for the near 2 year tenancy. The landlord is claiming \$780.00 they expended to sand and recoat the flooring which they testified had previously been done in 2013. Lastly, the landlord claims that due to the resulting remedies to the unit the incoming tenant could not occupy the unit on August 01, 2017, for which the landlord provided proof from the incoming tenant. The landlord is claiming the resulting loss of revenue in the amount of \$127.74.

The landlord's monetary claim on application is the sum of \$3526.08.

Tenant's application

The tenant seeks the return of their deposit and their filing fee, as well as to recover a variety of arbitrary and discretionary costs to advance their claim, also typically referred to as *court costs* and for which each party is responsible. As such, the tenant and the landlord were apprised that such costs are not compensable within the scope of the dispute resolution process and therefore they would be dismissed, without leave to reapply.

Analysis

A copy of the Residential Tenancy Act, Regulations and other publications are available at www.gov.bc.ca/landlordtenant.

The onus is on the respective parties to prove their claim on balance of probabilities.

Tenant's claim

It must be known that the tenant's security deposit is always the tenant's money, however is held in trust by the landlord to be administered at the end of the tenancy in accordance with the Act. If there is no legal reason for withholding the security deposit at the end of the tenancy the landlord must return it to the tenant or it will be returned to them through the dispute resolution process if it is determined the landlord is not entitled to retain it or a portion.

On preponderance of the evidence before me, on balance of probabilities, I find as follows. Under the circumstances provided by both parties I find the tenancy ended July 16, 2017 pursuant to Section 44(1)(d) when the tenant effectively vacated the unit. I accept the landlord first was aware the tenant had left on July 19, 2017 and that they made efforts to secure a mutual move out inspection immediately thereafter but that the tenant was insufficiently responsive in the process. During which time I find the landlord made efforts to mitigate rent revenue losses that may later have been compensable by the tenant if they did not make those efforts.

Landlord's claim

While I accept the landlord's efforts to conduct a mutual *move out* inspection in accordance with the Act, the Act is clear that the landlord must propose a second opportunity to the tenant by providing the tenant with a notice *in the approved form*, as per Residential Tenancy Regulation 17. In the absence of the latter, I find the landlord's right to make a claim against the security deposit as extinguished, rendering the landlord obligated to return the security deposit. It must be noted that in the event a landlord returns a security deposit the landlord retains the right to file for *damages* to the unit, as the landlord has done. None the less, with their right to claim against the deposit extinguished the security deposit will be returned to the tenant, subject only to any offsetting provisions in favour of the landlord's claims in this matter. The balance of the tenant's claims is dismissed, without leave to reapply.

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an applicant for loss must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claims on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In respect to the landlord's claim for a replacement kitchen countertop I find **Residential Tenancy Policy Guideline 40. Useful Life of Building Elements – Furnishings > Counters** states the useful life of counters is 25 years. Given the evidence that the age of the kitchen countertop in the rental unit was 50 years, I find that even if I accept the landlord's claim that the tenant through deliberate or negligent conduct damaged the countertop and therefore it required replacement, the mitigated or depreciated value of the countertop would result in an award of \$0.00. As a result I must dismiss this portion of the landlord's claims.

I find the landlord has provided sufficient evidence which meets the above test established by Section 7 of the Act in respect to their claim for walls remediation, cabinet doors remediation and repainting. As a result I grant the landlord their related claims in the sum of **\$920.00**. I find the landlord did not adequately prove their claim for paint in the amount of \$108.95, as a cost excluded from the above work, therefore this portion of their claim is dismissed.

I find the landlord has submitted sufficient evidence meeting the above test establishing that the tenant damaged the bathroom fixtures and as a result I grant the landlord their claim for bathroom fixtures in the amount of **\$64.13**.

I find the landlord has submitted sufficient evidence meeting the above test establishing that the tenant did not leave the rental unit reasonably clean as required by Section 37 of the Act. As a result I grant the landlord their request for cleaning in the amount of **\$150.00**.

I find that the tenant was obligated by the tenancy agreement to professionally clean the rental unit blinds at the end of the tenancy however did not. As a result I grant the landlord their cost for dry cleaning for same in the amount of **\$116.00**.

I accept the landlord's evidence and find the landlord has provided sufficient evidence which meets the above test established by Section 7 of the Act in respect to their claim for hardwood flooring remediation or refurbishment. In respect to this claim 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 the flooring in the rental unit was last refinished in 2013 I deduct 4 years, or 20% from the landlord's claim as depreciation with the result the landlord is owed **\$624.00** of their claim of \$780.00 for sanding and recoating the floor.

I find that the landlord has provided proof that as a result of the tenant's conduct the resulting remedies required to rehabilitate the rental unit for re-occupancy by a new tenant took longer than the start date of the new tenancy of August 01, 2017. As a result I grant the landlord their claim for lost revenue in the amount of **\$127.74**

As both parties were in part successful in their applications entitlement to their respective filing fees cancels out. Calculation for Monetary Order as follows. The tenant's security deposit in trust will be offset from the award herein.

landlord's sum award	\$2001.13
<i>Minus tenant's security deposit in trust</i>	- \$645.00

	to landlord	\$1356.13
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Conclusion

The parties' respective applications in part have been granted.

I Order the landlord may retain the tenant's security deposit of \$645.00 in partial satisfaction of their award and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1356.13**. 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: February 28, 2018

Residential Tenancy Branch