Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Introduction

This hearing was convened in response to cross-applications by the parties. The tenant filed their application August 09, 2017 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72.

The landlord filed their application August 14, 2017 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.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving the evidence of the other. However, the landlord acknowledges they did not send the tenant a series of e-mail exchanges comprising 4 pages of their evidence, therefore *I have not considered that evidence* nor does it form basis of my Decision. It must be noted that the landlord provided the tenant with reduced photo images on 6 pages comprising 6-7 images each page. 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 tenancy has ended. The undisputed evidence in this matter is as follows. The tenancy began December 15, 2015 as a written tenancy agreement subsequently renewed by the parties. The hearing had benefit of the written fixed term Tenancy Agreement ending December 14, 2017. However, the parties agreed to end the tenancy earlier than originally contracted. The parties' undisputed testimony was that they verbally agreed that the fixed term tenancy could collapse earlier than originally contracted without penalty and the tenancy would end on July 15, 2017 on the tenant providing the landlord 2 months' notice, which they provided May 13, 2017 and which the landlord accepted. However, the tenant vacated June 30, 2017 after satisfying the payable rent to that date.

At the outset of the tenancy the landlord collected a security deposit in the amount of $1000.00 which the landlord retains in trust. The payable rent was in the amount of $2150.00 due in advance on the fifteenth (15th) day of each month establishing the rental period as mid-month to mid-month. The landlord acknowledged they did not complete a Condition Inspection Report (CIR) for this tenancy. The parties agree there was no *move in* condition inspection conducted at the outset of the tenancy performed in accordance with the Act. And, there was no *move out* condition inspection conducted in accordance with the Act despite some effort to achieve an inspection. The landlord claims they offered the tenant a second opportunity to conduct a mutual *move out* inspection, with which the tenant disagreed. The landlord did not provide proof of their second opportunity offer.

Regardless, after the tenant vacated the landlord inspected the unit and determined the tenant left the rental unit unclean with excessive wear and tear, or damage. The tenant claims they thoroughly cleaned the rental unit and had the carpeting professionally cleaned, for which they provided a receipt dated June 29, 2017. They acknowledged that the carpet cleaner made written remarks on their receipt that not all soiling or marks on the carpeting could be removed by their service.

Tenant's application

The tenant seeks the return of their deposit and compensation pursuant to Section 38 of the Act for double the security deposit. The landlord agreed that by July 11, 2017 they had received the tenant's written forwarding address by registered mail addressed July 06, 2017. By way of a letter dated July 18, 2017 The landlord responded to the tenant

that they were keeping the security deposit in partial satisfaction of costs for certain deficiencies they found in the unit, including damages, unreturned or lost items of the tenancy, cleaning, and loss of rent revenue.

Landlord's application

The landlord seeks costs for general cleaning and carpet cleaning in the *after tax* amount of $441.00, "paint touch up" for walls in the respective *after tax* amount of $283.50, a replacement parking pass ($100) and entry fob ($75) in the sum of $175.00, cleaning supplies of $19.04, repainting and re-flooring of the unit in the amount of $3868.15 and loss of revenue of $2400.00 for the period of July 01 to 31, 2017 predicated on a higher rent. The landlord was advised their mailing costs are not compensable.

The tenant agreed they owe the landlord for a new fob in the amount of $75.00. The tenant disagreed with the landlord's testimony they did not return a parking pass hanger, however the tenant testified they notified the landlord by text message that they could not locate it. The tenant also agreed with the landlord that they did not satisfy all the rent to July 15, 2017 ($1075.00) as was originally agreed as the end of the tenancy and the collapse of the fixed term condition.

The landlord claims they expended an amount to extricate a foul odour emanating from the sink garburator area so as not to detract from potential renters. The landlord is claiming $19.04 for which they provided 2 receipts dated July 09 and July 29, 2017. The tenant did not agree or disagree with the landlord's claim testifying they had not been aware of an odour.

The landlord claims that the tenant owes 44% of a 'handyman' *quote* in the sum amount of $13,939.33 they obtained for a complete repainting of the unit and for substantial replacement of the laminate flooring. The landlord's actual claim is less than 44%, in the amount $3868.15. It must be known that the landlord's sole quote is neither dated, signed, nor identifies an address or an entity. The landlord claims the tenant left the rental unit walls with nail and screw holes and that some of the flooring was scratched during the tenancy. The landlord provided photo images of nail holes, and some apparent scratches to the flooring. The tenant disputes they caused any of the scratches and the landlord acknowledged that some of the scratches were there at the outset of the tenancy. The tenant disputes they are responsible for any additional reparation of walls beyond nail and screw holes. The landlord explained that the amount paid for "paint touch up" is unrelated to nail and screw holes remediation or other painting requirements.

The landlord further explained that following the tenant's departure from the rental unit on June 30, 2017 they had to expend time to remedy the claimed damage to the unit so as to ready the unit for occupation August 01, 2017. The landlord provided receipts for all their claims dating to July 11, 2017. They argued they are owed loss of revenue to the end of July 2017.

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. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

Section 38 of the Act states that, within 15 days after the later of, the date of the end of the tenancy and the landlord receiving the tenant's forwarding address in writing, the landlord must either repay any deposit of the tenancy back to the tenant or file an application for dispute resolution making a claim against the deposit.

I find the tenant's right to the return of their security deposit is not extinguished. I find the tenant sent their forwarding address in writing July 06, 2017 by registered mail and the landlord acknowledged having received it by July 11, 2017. The landlord did not return the deposit nor filed an application within the prescribed 15 days to do so, having filed their application August 14, 2017. As a result, Section 38(6) states that the landlord,

> 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
>
> 38(6)(b) **must pay the tenant double the amount of the security deposit,** pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of $1000.00 and was obligated under Section 38 to return this amount. The amount which is *doubled* is the original amount of the deposit. As a result I find the tenant has established an entitlement claim of **$2000.00.**

Landlord's claim

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, the 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 claim 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.

I find the tenant and landlord agree the landlord is owed **$75.00** for a fob. On a balance of probabilities I also accept the tenant's evidence they informed the landlord they could not locate the parking pass, and for which as a result I grant the landlord **$100.00.**

Section 37 of the Act, in relevant part states: **(emphasis mine)**

Leaving the rental unit at the end of a tenancy

37 (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

I find that in the absence of a Condition Inspection Report the landlord's photo images do not adequately portray or indicate the rental unit as having been left unreasonably dirty; and, as the legal standard is *reasonably clean* I accept the tenant's argument they cleaned the unit to a reasonable standard and I dismiss the landlord's claim for general cleaning. However, I accept the landlord's evidence that with additional cleaning they were able to improve the cleanliness of the carpet. As a result, I grant their claim for Carpet Steam shampoo Service in the after tax amount of **$126.00.**

The tenant did not effectively dispute the landlord's claim that nail and screw holes were left by them. I find the landlord did not aptly support their claim for *paint touch up service*, however I find their claim amount for it is a reasonable representation for concealing and touching up small nail and screw holes, and therefore I grant their requested amount for *paint touch up service* of **$283.50**, *after tax.*

I find the landlord's claim for cleaning products to remediate an odour was not effectively disputed by the tenant. On a balance of probabilities I find it valid therefore I grant the landlord the amount of their receipt of **$19.04.**

While the landlord's photo image evidence indicates some wall markings, drywall dents and other drywall issues, the tenant denies these issues resulted during the tenancy. In the absence of a *move in* inspection report and a subsequent *move out* report I find the landlord has not supported their burden of proof in respect to their claim. The landlord has not presented sufficient evidence supporting that in addition to the cost of attending to nail and screw holes the tenant is responsible for additional painting.

I find the landlord did not aptly support their claim of $3868.15. The landlord was unable to aptly explain how their claim amount represents 44% of any calculation provided into evidence by the landlord. But moreover, again in the absence of a *move in* inspection report, and the parties' testimony the flooring was scratched before the tenancy originated, I find the landlord has not provided sufficient evidence to prove the tenant caused damage to the unit representing the amount claimed. As a result I must dismiss this portion of the landlord's claim of $3868.15.

I find that the parties verbally contracted by their agreement the *fixed term tenancy* could end with the tenant providing 2 months' notice, and on satisfying that part of the agreement the remaining part was that the tenancy would terminate at the end of the 2 months: July 15, 2017, and not June 30, 2017. As a result, I find the tenant owes the

landlord the balance of rent for their last month of the tenancy to July 15, 2017. I grant the landlord one half month's rent in the amount **$1075.00.**

I find that as a result of the tenant vacating 2 weeks earlier than verbally contracted the landlord has not proven they conducted any work beyond July 15, 2017 associated with the expired tenancy so to justify a claim for loss of revenue beyond July 15, 2017, with the result that their claim for loss of revenue must fail and is dismissed.

As both parties were in part successful in their applications their entitlement to their respective filing fees cancel out.

Calculation for Monetary Order

The tenant's total award is $2000.00. The landlord's total award is the sum of $1678.54. The security deposit in trust will be offset from the award made herein.

Tenant's award	$2000.00
Landlord's award	- $1678.54
Net award to tenant	**$321.46**
for calculation only: tenant's security deposit in trust	***-*** *$1000.00*
for calculation only: to landlord	*($678.54)*

Conclusion

The parties' respective applications, in part, have been granted.

I Order the landlord may retain $678.54 from the tenant's security deposit and return the balance of $321.46 to the tenant, forthwith.

To perfect the above Order **I grant** the tenant a **Monetary Order** under Section 67 of the Act in the amount of **$321.46.** 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 07, 2018

Residential Tenancy Branch