



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0931291 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) by the landlord under the *Residential Tenancy Act* (“Act”) for a monetary order for damage to the unit, site or property, for authorization to retain the tenant’s security deposit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

An agent for the landlord (“agent”), the tenant and a tenant advocate/friend (“friend”) attended the teleconference hearing. The parties were given the opportunity to provide their evidence orally and ask questions about the hearing process. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Neither party expressed any concerns regarding the service of documentary evidence or the application.

Preliminary and Procedural Matters

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

During the hearing the landlord agent was cautioned for his argumentative demeanor during the hearing. The landlord was advised that he would be cautioned for not completing a proper outgoing condition inspection report as required by the regulation which will be dealt with later in this decision.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2016 and was scheduled to end on July 31, 2017. The parties agreed that the tenant vacated the rental unit on July 31, 2017. Monthly rent was \$830.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$415.00 which the landlord continues to hold.

The landlord has applied for a monetary claim in the amount of \$2,133.39 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Supplies for cleaning and painting, blinds	\$203.01
2. Cleaning	\$60.00
3. Repairs	\$175.00
4. Legal fees	\$345.38
5. Filing fee	\$100.00
6. Estimate of time to complete dispute resolution application	\$1,250.00
TOTAL	\$2,133.39

At the outset of the hearing, items 4 and 6 were dismissed without leave to reapply as there is no remedy provided for under the *Act* to compensate the landlord for legal fees and time to prepare for a dispute resolution application. Therefore, I have not considered those items further and do not provide leave to reapply as I find the landlord has not met the burden of proof, the test of which will be described further below.

Regarding item 1, the landlord has claimed \$203.01 which the agent stated was comprised of \$10.58 for cleaning supplies, \$53.62 for painting supplies and \$138.81 for blinds. The agent referred to a receipt submitted in evidence and stated that the receipt incorporates a \$14.00 plus tax return of "vinyl" that was deducted as the vinyl had been

returned to the building supply store. The agent also referred to an incoming condition inspection dated July 31, 2016. The agent referred to a document dated July 31, 2017 which the agent was informed was not a proper outgoing condition inspection report as it did not comply with the regulations as it just listed items and amounts. The agent was advised that the landlord was considered not to have completed an outgoing condition inspection report as a result. The tenant confirmed that she did not agree to the fees listed by the agent on the document dated July 31, 2017.

The agent referred to photocopied colour photos that the agent was advised appeared to be printed from either a poor quality printer or taken with a poor quality camera or possibly both as the images were of poor quality. One of the photos the agent claims showed grease which the agent was advised I could not see in the photo. Another photo the agent referred to said there was damage behind a couch which the agent was advised I could not see in the poor quality photo.

The tenant did not deny that there was damage to the wall from furniture, specifically that a couch did scratch the walls. The tenant's position is that the damage was wear and tear while the landlord claims the damage was willful neglect. The tenant denied that she willfully damaged the walls and that the couch would move against it as the flooring was uneven causing the couch to move against the wall. The agent explained that the amount of \$53.62 is part of the \$203.01 receipt and that the remainder of the amount was related to the blinds portion of item 1. The agent testified that he was not charging the tenant for drywall compound, sandpaper, primer paint and trim paint.

The final portion of item 1 is \$138.81 for blinds which the agent referred to as the remainder of the receipt submitted in evidence. The agent referred to a photo submitted in evidence that appeared to be missing several pieces of the blinds. The agent stated that the tenant broke those portion of the blinds by reaching through the blinds to open and close the window versus raising the blinds to avoid damage the blinds and that the broke blinds was not reasonable wear and tear as a result. The tenant claims that the same thing occurred in the unit above her unit and was caused by the wind knocking the blinds together. The incoming condition report indicates that the blinds were in good clean condition at the start of the tenancy. The agent stated that if the wind caused damage then the blinds would not be damaged only in the one area and that the tenant's explanation did not make sense.

Regarding item 2, the landlord has claimed \$60.00 for cleaning costs. The landlord submitted a document that lists the work required to clean the rental unit by cleaner N.A. ("cleaner"). The landlord also submitted a cheque from the landlord in the amount

of \$60.00 dated August 2, 2017 to the cleaner. Based on the photo evidence and the receipt, this portion was granted to the landlord during the hearing as I find the landlord has met the burden of proof which will be addressed later in this decision.

Regarding item 3, the landlord has claimed \$175.00 for repairs to the rental unit comprised of seven hours at \$25.00 per hour for work that the agent completed himself according to the agent's testimony. The agent stated that he spent ½ hour to gather supplies, ¾ to repair the blinds, ¼ hour to clean for repairs, 1.5 hours for painting, and 4 hours to repair the laminate flooring. The agent stated that he is unsure how the flooring could have separated as seen in the photo evidence in just one side near the baseboards. The tenant confirmed that she never complained in writing regarding what the tenant claims was poorly installed laminate flooring that was separating from each other starting at the baseboards and was uneven. The landlord was advised that based on the photo evidence, I was not satisfied that the laminate flooring had been installed correctly as the landlord could not testify as to how the damage was caused and that in the balance of probabilities given the location of the separating laminate flooring, I found that the original installation was not completed properly. Therefore, the four hour portion of the labour costs for item 3 was dismissed without leave to reapply during the hearing, due to insufficient evidence. I will deal with my analysis further below regarding item 3.

Regarding item 5, I will deal with the filing fee later in this decision below.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or loss that was incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Firstly regarding the condition inspection report, while the landlord and tenant did complete an incoming condition inspection report that holds significant weight in my decision and is required under section 23 of the *Act*, I note that the landlord failed to complete an outgoing condition inspection report in accordance with section 20 of the regulation and as required by section 35 of the *Act*. Section 20 of the regulation applies and states:

Standard information that must be included in a condition inspection report

20 (1) A condition inspection report completed under section 23 or 35 of the *Act* must contain the following information:

- (a) the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b) the address of the rental unit being inspected;
- (c) the date on which the tenant is entitled to possession of the rental unit;
- (d) the address for service of the landlord;
- (e) the date of the condition inspection;
- (f) a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
 - (i) entry;
 - (ii) living rooms;
 - (iii) kitchen;
 - (iv) dining room or eating area;
 - (v) stairs;
 - (vi) halls;
 - (vii) bathrooms;

- (viii) bedrooms;
- (ix) storage;
- (x) basement or crawl space;
- (xi) other rooms;
- (xii) exterior, including balcony, patio and yard;
- (xiii) garage or parking area;
- (g) a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;
- (h) any other items which the landlord and tenant agree should be included;
- (i) a statement identifying any damage or items in need of maintenance or repair;
- (j) appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;
- (k) the following statement, to be completed by the tenant:

I,

Tenant's name

☐ agree that this report fairly represents the condition of the rental unit.

☐ do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....
.....
.....
.....
.....
.....;

(l) a space for the signature of both the landlord and tenant.

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act *[condition inspection: end of tenancy]* must contain the following items in a manner that makes them clearly distinguishable from other information in the report:

- (a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;
- (b) if agreed upon by the landlord and tenant,
 - (i) the amount to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed.

[Reproduced as written]

Based on the above, I find the landlord breached section 20 of the regulation and section 35 of the *Act* by failing to complete a move-out inspection report in accordance with the regulation as described above. As a result, **I caution** the landlord to comply with section 35 of the *Act* and section 20 of the regulation in the future.

At the outset of the hearing, items 4 and 6 were dismissed without leave to reapply as there is no remedy provided for under the *Act* to compensate the landlord for legal fees and time to prepare for a dispute resolution application and/or proceeding. Therefore, I have not considered those items further and do not provide leave to reapply as I find the landlord has not met the burden of proof, the test of which will be described further below.

Item 1 - The landlord has claimed \$203.01 which the agent stated was comprised of \$10.58 for cleaning supplies, \$53.62 for painting supplies and \$138.81 for blinds. I have carefully reviewed the receipt, testimony, photo evidence and the incoming condition inspection report and find that the landlord has met the burden of proof for the full amount claimed of **\$203.01**. In reaching this finding I have considered that the tenant did not deny damaging the walls and I find that the damage exceeds reasonable wear and tear. In addition, find that the agent complied with section 7 of the *Act* by minimizing some of the cost to the tenant by performing the work himself and not charging for drywall compound, sandpaper, primer paint and trim paint. I find that the tenant breached section 37 of the *Act* which only provides for reasonable wear and tear to the rental unit and that the photo evidence does not support reasonable wear and tear. **I caution** the tenant to comply with section 37 of the *Act* in the future.

I will also address the tenant's testimony regarding the blinds which I find to be unreasonable and inconsistent with the photo evidence. I find that I prefer the landlord's version of events that the damage was likely caused by the tenant reaching through the blinds to open or close the windows and by failing to raise and lower the blinds to gain

access to the window which I find to be negligent on the part of the tenant. I agree with the landlord that if the wind was causing the blinds to hit each other and cause damage that the blinds would be damaged in more places than just one area near the window lock.

Item 2 – The landlord has claimed \$60.00 for cleaning costs. As mentioned above, I find the landlord has met the burden of proof based on the photo evidence which I find does not show a clean rental unit and that the invoice for cleaning costs is detailed and supported by a cheque issued by the landlord for cleaning costs. Therefore, I find the tenant breached section 37 of the *Act* by failing to leave the rental unit reasonably clean condition upon vacating the rental unit. Given the above, I grant the landlord **\$60.00** for item 2 as claimed.

Item 3 - The landlord has claimed \$175.00 for repairs to the rental unit comprised of seven hours at \$25.00 per hour for work that the agent completed himself according to the agent's testimony. The agent stated that he spent ½ hour to gather supplies, ¾ to repair the blinds, ¼ hour to clean for repairs, 1.5 hours for painting, and 4 hours to repair the laminate flooring. During the hearing, the agent was advised that I was not satisfied that the photo evidence supported the laminate floor was damaged by the tenant. In carefully reviewing the photo evidence, I find that it is more likely than not that the laminate flooring was not correctly installed. In reaching this finding I note that the laminate flooring was only separated or showing gaps close to the baseboard and was not lifting, and that separating of laminate boards is consistent with not correctly installing the flooring in relation to the baseboards.

Further to the above, I have considered the landlord's testimony that was vague in describing how the tenant could have damaged the flooring and therefore I prefer the testimony of the tenant that she felt the flooring had been incorrectly installed based on it separating during the tenancy in that area and not throughout the rest of the room. For example, the landlord did not testify that the laminate flooring in the area where the laminate pieces were heavily worn or scratched indicating that overuse may have caused shifting in the laminate pieces. Given the above, I dismiss four of the seven hours claimed without leave to reapply due to insufficient evidence. For the remainder of the three hours claimed; however, I do find the landlord provided sufficient evidence to support the three hours of labour for a total of **\$75.00** for item three. The landlord is granted that amount accordingly.

Items 4 and 6 – As described above, both items 4 and 6 were dismissed without leave to reapply as there is no remedy under the *Act* for a tenant to compensate the landlord

for seeking legal advice or to compensate a landlord for their time in preparing for dispute resolution. Therefore, I find the landlord has failed to meet parts one through four inclusive for items 4 and 6.

Item 5 – As the landlord's claim had merit, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the *Act* pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$438.01** comprised of \$203.01 for item 1, \$60.00 for item 2, \$75.00 for item 3 and \$100.00 for item 5. Pursuant to section 38 of the *Act*, I **authorize** the landlord to retain the tenant's full security deposit of \$415.00 which has accrued no interest to date in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order for the balance owing by the tenant to the landlord under section 67 of the *Act* in the amount of **\$23.01**.

Conclusion

The landlord's claim is partially successful as described above. The landlord has established a total monetary claim in the amount of \$438.01 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$415.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenant to the landlord under section 67 of the *Act* in the amount of \$23.01. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Both parties have been cautioned as described above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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: March 5, 2018

Residential Tenancy Branch