



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the *Residential Tenancy Act* (the Act) for damage to the unit, to recover the filing fee, and an Order allowing them to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The tenant acknowledged receiving all of the evidence of the landlord consisting of narrative, photographs, and estimates. The tenant did not provide document evidence. 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

This tenancy has ended. The following is undisputed by the parties. The tenancy began August 01, 2016. Rent in the amount of \$2500.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit and a pet damage deposit from the tenant in the sum amount of \$2500.00, which they retain in trust. The tenancy ended August 16, 2017 when the tenants vacated.

The parties agree they conducted a mutual inspection of the unit at the start of the tenancy and at the end of the tenancy; however, the parties generally disagree as to the

condition of the rental unit at the start and end of the tenancy. The landlord provided into evidence a largely incomplete Condition Inspection Report (CIR). None the less, both parties did not dispute the rental unit was with some deficiencies at the start of the tenancy. The parties agree that at the end of the tenancy there were some deficiencies which the landlord has attempted to represent by this application.

During the hearing the parties agreed the landlord is owed compensation for an NSF (insufficient funds) fee of \$7.00, a water bill of \$230.36, \$154.50 for new locks, \$61.82 for a new blind and \$25.00 for a clogged sink, for an agreed total in the sum of \$478.68.

The parties agree that the tenant vacated later than agreed upon, by the end of day on August 16, 2017, representing 2 days after their agreed scheduled move of August 15, 2017 at 1:00 p.m. The landlord is claiming their excess moving cost beyond the agreed time, in the amount representing 2/3 of their moving costs invoice *by the day*, in the amount of \$126.50.

The landlord seeks the cost of an inspection of the septic system resulting in the tenant having placed a temporary swimming pool over the septic field area. The landlord claims it was recommended they have the septic system inspected. The tenant did not dispute this claim and does not deny the occurrence.

The landlord claims the tenant damaged the shrubbery and plants on the property, primarily because they did not water them as required by the tenancy agreement requiring *watering of shrubs and plants*. The landlord also claims the tenant did not maintain the grass areas to a *suitable condition* as stated in the tenancy agreement, in that the tenant placed a larger amount of grass clippings on the property. The tenant disputes they were responsible for the claimed damage, citing the extraordinarily "harsh" previous winter and draught summer conditions as the cause of the claimed damage to the cedar trees and other plants. The tenant also testified that they routinely watered as required and not responsible for the damage claimed by the landlord. The landlord submitted a quote for remediation of the claimed damaged plants and property remediation in the amount of \$2269.05.

The landlord claims \$1680.00 for odour eradication for which they provided a quote for professional measures to address pet urine odour in the house, specifically related to cat urine. The tenant agrees they originally housed a dog, as was authorized by the landlord, until they did not, and then acquired a cat for the latter part of the tenancy. The landlord claims finding areas containing pet urine including at the baseboards and inside vent openings. The tenant did not dispute the landlord's premise their cat caused soiling of the unit. The landlord provided witness statements attesting to the presence of cat urine odour in the house.

The landlord claims the tenant caused excessive wear and tear to portions of the walls, by way of holes, indents, and damage from hanging hardware as well as paint splatter. Also the landlord claims the tenant repainted to a *less than good workmanship* standard, and in so doing also did not match paints. The landlord is claiming \$754.50 representing their costs to remediate the various deficiencies to walls. The tenant provided witness statements and photo images, as well as 2 quotes for the work amounting to an average of \$954.50.

The landlord claims for damage to 2 finished kitchen cabinetry components for which they provided an invoice in the amount of \$194.91. The tenant does not dispute the cabinetry components were damaged during the tenancy from their installation of a sliding refuse cage and improper shutting of cabinetry doors.

The landlord claims labour costs for general cleaning of the unit, yard work and other remedial work. The tenant challenged the landlord's claim of \$1000.00 representing 50 hours of labour at \$20.00/hour. However, the tenant did not wholly deny responsibility for the landlord's labour. The landlord claimed their labour amounted to their claim. The tenant suggested \$300.00 more reasonably represented the landlord's claim.

Analysis

The full text of the Act, Regulation, and other resources 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 photograph 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. The landlord is claiming the tenant is responsible for *damage*: deterioration in excess of reasonable wear and tear or destruction.

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 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 the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

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 the loss claimed.

I find the landlord is owed compensation, as preliminarily agreed by the parties, for miscellaneous items/claims in the amount of **\$478.68**.

I accept the parties' respective evidence they effectively agreed that at the start of the tenancy the rental unit was absent of gross deficiencies I find the CIR indicated solely 3 factors. Otherwise, the CIR provided by the landlord is absent of any other information rendering the document completely unreliable as a measure of the condition of the rental unit before and after the tenancy. Therefore I place no evidentiary weight on the landlord's CIR.

In respect to the landlord's claim for their excess moving costs due to the conduct of the tenant I accept the evidence of both parties in finding that the tenant caused a delay resulting in the landlord having to pay for an excess of 2 days for moving, and for which I grant the landlord the amount of **\$126.50**.

I find that under the parties' described circumstances the landlord's claim for a septic system inspection is reasonable, and therefore I grant the landlord their claim for **\$109.20**.

I find the landlord has not provided sufficient evidence proving their claim that solely the tenant, through their neglect or their conduct in violation of the Act or tenancy agreement caused damage to the plants or shrubbery. As a result I must **dismiss** this portion of the landlord's claim.

I find that the landlord has provided sufficient evidence that on balance of probabilities, the tenant's pet, their cat, caused an odour in the unit requiring professional measures to eradicate. As a result, I grant the landlord their claim of **\$1680.00** for professional odour eradication.

I find that the landlord has provided sufficient evidence in support of their claim for wall and painting remediation. As a result I grant the landlord their claim for **\$754.50**.

I find that the evidence in respect to the kitchen cabinetry indicates that the tenant did not take sufficient measures to prevent damage to the landlord's property. As a result I grant the landlord their claim for replacement components of finished cabinetry in the amount of **\$194.91**.

I find that the landlord has not provided sufficient evidence in support of their claim for labour. It was available to the landlord to have provided some accounting of their time spent in order to support their claim, but did not. I find that as a result I prefer the tenant's evidence that **\$300.00** reasonably represents this portion of the landlord's claim, and therefore I grant the landlord this amount.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant.

The security and pet damage deposits held in trust will be offset from the award made herein.

Calculation for Monetary Order is as follows:

Preliminarily agreed amount to landlord	\$478.68
Excess moving costs due to tenant	\$126.50
Septic system inspection	\$109.20
Odour eradication	\$1680.00
Walls and painting remediation	\$754.50
Kitchen cabinetry components	\$194.91
Landlord's labour	\$300.00
filing fee	\$100.00
<i>less tenant's security and pet damage deposits in trust</i>	<i>- \$2500.00</i>
Monetary Order landlord	\$1243.79

Conclusion

The landlord's application in part has been granted, and the balance dismissed, without leave to reapply.

I Order that the landlord may retain the security deposit and pet damage deposits totalling \$2500.00 in partial satisfaction of their award.

I grant the landlord a Monetary Order under Section 67 of the Act for the balance of their award in the amount of **\$1243.79**. 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: March 27, 2018

Residential Tenancy Branch