



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 465741 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, OPB, OPN, SS, FF

Introduction

The Landlord applied for an order of possession for the rental unit; for money owed or compensation for damage or loss under the *Residential Tenancy Act*, (“the Act”) regulation, or tenancy agreement; for a monetary order for damage to the rental unit; to keep the security deposit in satisfaction of the claim; and to recover the fee for the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The documentary evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties testified that the tenancy ended when the Tenant vacated the rental unit on July 28, 2017. The Landlord’s request for an order of possession is not needed and is dismissed.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage or loss?
- Is the Landlord entitled to a monetary order for damage to the rental unit?
- Is the Landlord entitled to keep the security deposit and pet damage deposit towards the claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that they entered into a tenancy agreement that began on July 1, 2015, as a three year fixed term tenancy. Rent in the amount of \$1,400.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$700.00 and a pet damage deposit of \$700.00. On May 31, 2017, the Tenant gave written notice to the Landlord that she is ending the tenancy. The Tenant vacated the rental unit on July 28, 2017. The Landlord provided a copy of the tenancy agreement and the Tenant D.W. acknowledged that she signed the tenancy agreement.

The tenancy agreement includes a liquidated damages clause that states if the Tenant ends the tenancy or is in breach of the Act or a material term of the tenancy that causes the Landlord to end the tenancy, the Tenant will pay the Landlord \$5,200.00 for the costs of re-renting the unit.

The Landlord's application indicates the Landlord is seeking the amount of \$5,736.15. The Landlord's monetary order worksheet indicates the Landlord is seeking compensation in the amount of \$6,835.56. On September 11, 2017, the Landlord submitted paperwork to the Residential Tenancy Branch ("the RTB") to amend his application for dispute resolution and increase his monetary claim to \$6,835.00; however, the amendment to the application fee was never paid and the application was never processed by the RTB. An amended application was never provided to the Landlord for service on the Tenant.

I find that the Landlord's claim is restricted to the amount of \$5,736.15 as provided in the application that was served to the Tenant.

The Landlord provided testimony for the following claims:

Chimney Restoration	\$589.05
Repairs and Cleaning	\$672.02
Stair Case	\$164.37

Front Door Lock	\$119.75
Curtain and Rod	\$90.37
Liquidated Damages	\$5200.00

Chimney Restoration

The Landlord testified that the chimney was painted by the Tenant without the Landlord's permission. The Landlord testified that the Tenant was informed to repaint the chimney at the end of the tenancy but did not do so. The Landlord testified that he had the chimney repainted and is seeking \$589.05 for the labor cost and materials. The Landlord provided a receipt dated August 22, 2017, for the cost to paint the chimney bricks.

In reply, the Tenant testified that she painted the chimney and did not repaint it at the end of the tenancy because the Landlord informed her that she did not need to repaint it. The Tenant referred to an email dated July 8, 2017, that she received from the Landlord that states she does not have to repaint the chimney. The Tenant provided a copy of the email from the Landlord which states "...I will let you leave the brick chimney wall as you painted it..."

The Landlord submitted that the wall next to the chimney needed to be painted.

The Tenant submitted that the Landlord's claim was about the chimney and his invoice is for painting the chimney.

Repairs and Cleaning

Flooring

The Landlord testified that the Tenant is responsible for damage to the laminate floors. The Landlord provided three photographs of the damaged laminate flooring. The Landlord testified that the Tenant's photographs show a carpet covering the damage to the floor. The Landlord testified that he had the floor repaired at a cost of \$58.00.

In reply, the Tenant testified that the floor was in poor condition at the start of the tenancy. She submitted that the floor was separating and referred to her photographic evidence showing to areas that had been previously patched and areas that are separating. She submitted that her dog did not damage the flooring.

The Tenants witness Mr. A.Y. testified that the laminate flooring is of poor quality and was poorly installed. He submitted that there was pre-existing damage at the start of the tenancy. Mr. A.Y. testified that the rental unit was left in excellent condition.

Yard

The Landlord submitted that the Tenants are responsible for damage to the yard made by their dog. The Landlord testified that there were approximately 40 holes. The Landlord testified that the holes in the yard were repaired at a cost of \$350.36. The Landlord provided two photographs of the holes in yard that he states were taken after the Tenant moved out. The Landlord provided a copy of an invoice dated July 30, 2017, that indicates a contractor filled and seeded holes throughout the yard.

In reply, the Tenant testified that she filled all the holes in the yard prior to moving out. She testified that there were no holes. The Tenant's witness, Mr. D.L. testified that he did not see any massive holes that would require repair.

Kitchen

The Landlord submitted that the kitchen was left unclean. He submitted that the fridge was dirty and the range hood was caked with grease and is seeking \$150.00 for five hours of cleaning. The Landlord provided a photograph of a dirty range hood.

In reply the Tenant submitted that she cleaned the kitchen and range on July 25, 2017. The Tenant provided 12 photographs of the rental unit at the end of the tenancy showing the state of cleanliness. She submitted that her photographs of the kitchen and range hood were taken on July 28, 2017.

Windows

The Landlord testified that the exterior windows were left dirty. The Landlord provided a photograph of a dirty window. The Landlord is seeking \$41.00 for the effort to clean the windows.

The Tenant did not provide a response to the Landlord's claim for cleaning the windows.

Deck

The Landlord submitted that the Tenant is responsible for damage to the outside deck. The Landlord provided a photograph of a scorch or burn to the deck. The Landlord is seeking \$18.40 for the cost to repair the deck.

The Tenant did not provide a response to the Landlord's claim for a burn to the deck.

Door

The Landlord submitted that he is seeking \$23.00 for the cost to repair a gouge on a door. The Landlord provided a photograph of a bi-fold door. The Landlord provided a copy of an invoice dated July 30, 2017, that indicates a contractor repaired and stained a damaged closet door.

In reply, the Tenant testified that the rental unit is in an older house and the bi-fold door was old and in bad shape. She submitted that the damage to the door was pre-existing.

Stair Case

The Landlord is seeking to recover the cost of \$164.37 for repairing an exterior staircase. He submitted that the stairs were built in 2011. He submitted that somebody dropped something on the stairs and they became unsteady. He submitted that he believes the Tenant dropped a heavy kitchen island on the stairs causing damage. The Landlord testified the stairs were built to code.

In reply, the Tenant testified that the deck was not built to code. The Tenant submitted that there is rot on the deck and she referred to photographs she provided. She submitted that the stairs breaking are due to the stairs not being built correctly. She submitted that the stairs broke prior to the removal of the kitchen island.

Front Door Lock

The Landlord is seeking \$119.75 for the cost of purchasing a new lock for the front door. The Landlord testified that the Tenant failed to return the keys and the lock could not be re-keyed.

In reply, the Tenant acknowledged responsibility for this cost.

Curtain and Rod \$90.37

The Landlord is seeking \$90.37 for the cost of replacing a curtain and rod.

In reply the Tenant acknowledged that they lost or destroyed the curtain.

Liquidated Damages \$5,200.00

The Landlord submitted that the tenancy agreement contains a liquidated damages clause that requires the Tenant to pay \$5,200.00 for the Landlord's costs of re-renting the rental unit, if the Tenant ends the fixed term tenancy early. The Landlord submitted his claim is comprised of \$2,100.00 for a loss of commission; \$550.00 for liquidated damages; and an additional \$2,550.00 to bring the claim amount to \$5,200.00.

The Landlord testified that the Tennant breached the tenancy agreement by ending the tenancy early. He submitted that the Tenant is responsible to pay the full liquidated damages amount. The Landlord submitted that he lost money because a contract was terminated between him and a property manager.

In reply, the Tenant submitted that the Landlord agreed that she could end the tenancy early. She submitted that the Landlord said he would take care of finding a Tenant. She submitted it was a waiver and there should be no liquidated damages award.

The Tenant's counsel submitted that the Landlord's claim regarding the property management contract has nothing to do with the Tenant. He submitted that the Landlord suffered no loss as new Tenants moved into the rental unit immediately.

Security Deposit and Pet Damage Deposit

The Landlord is seeking to retain the security deposit and pet damage deposit in partial satisfaction of his claims.

The Tenant submitted that the Landlord failed to conduct a move in inspection at the start of the tenancy. She submitted that the Landlord's wife walked through the unit but did not complete a condition inspection report. She submitted that she attempted to arrange a move out inspection with the Landlord at the end of the tenancy; however the Landlord said it was too late.

The Tenant's counsel referred to an email she received from the Landlord that states she is not permitted on the property, despite there being two days left on the tenancy. She submits that the Landlord breached the requirement for a move out inspection.

In reply the Landlord submitted that a move in inspection was completed at the start of the tenancy. He submitted that he was present with his wife and the condition inspection report was photocopied and sent to the Tenant as an email attachment. The Landlord testified that the signature on the report is identical to her signature on the lease.

The Landlord submitted that he gave the Tenant 20 opportunities for a move out inspection.

Analysis

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new-tenant begins to occupy the rental unit.

Section 17 of the Residential Tenancy Regulation provides that a Landlord must offer to a Tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the Tenant is not available the Landlord must propose a second opportunity to the Tenant by providing the Tenant with a notice in the approved form.

The Residential Tenancy Policy Guideline # 16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

A party seeking compensation should present compelling evidence of the value of the damage or loss in question.

The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises states:

a tenant is generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest.

The Residential Tenancy Policy Guideline #4 Liquidated Damages provides:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

...

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Based on the evidence and testimony before me, and on a balance of probabilities, I make the following findings:

Chimney Restoration

I find that the Landlord's claim was for the cost of painting the chimney and his invoice is for painting the chimney. I find that at the end of the tenancy the Landlord informed the Tenant via email that she was not required to repaint the chimney.

The Landlord's claim for \$589.05 is dismissed.

Laminate Floor.

I grant the Landlord \$58.00 for the repair of the laminate flooring. While I accept the Tenant's testimony that there were a couple areas that had pre-existing damage, I find the evidence of damage provided by the Landlord is for a different area of the floor. The Landlord provided the stronger evidence.

Holes in Yard.

I accept the Landlord's evidence that there were holes in the yard at the end of the tenancy. However, the Landlord only provided two photographs showing a few holes. The Tenant testified that all the holes were filled. The Landlord has provided insufficient evidence to support an award of compensation in the amount of \$350.36 for filling approximately 40 holes and seeding the yard. I grant the Landlord nominal award of \$50.00 for the cost to repair the holes.

Kitchen

The Landlords claim for \$150.00 for five hours of cleaning is dismissed. I accept the Tenant's photographic evidence that the kitchen was left clean. I note that the

Landlord's photograph of the range hood does not appear to be the same range hood as shown in the Tenant's photographs. I find that the Tenant has provided the stronger evidence that the kitchen was left clean.

Exterior Windows

I grant the Landlord \$41.00 for the effort to clean windows. The Landlord provided a photograph showing a dirty window and the Landlord's claim was unopposed.

Deck

I grant the Landlord \$18.40 for the cost to repair the deck. The Landlord provided a photograph of a burn mark on a deck and the Landlord's claim was unopposed.

Bi fold Door

After considering the photograph of the door, I accept the Tenant's submission that the door was old and in poor shape. However, I find that the gouge in the door is more than just normal wear and tear. The Landlord is seeking \$23.00 for the cost to repair the gouge and his invoice indicates that the door had stain applied.

I find that the door is old and the Tenant is not responsible for the full cost to stain the door. I grant the Landlord a nominal amount of \$10.00 for the repair of the door.

Stair Case

The Landlord's claim for \$164.37 is dismissed. There is insufficient evidence from the Landlord to establish that the damage to the six year old stair case was caused by deliberate actions or neglect of the Tenant or her guests.

Front Door Lock

I grant the Landlord \$119.75 for the cost to replace the front door lock.

Curtain and Rod

I grant the Landlord \$90.37 for the cost to replace the curtain.

Liquidated Damages

I find that the parties agreed at the start of the tenancy to a liquidated damages amount of \$5,200.0 if the Tenant ended the fixed term tenancy early. I find that the Tenant ended the fixed term tenancy early when she gave written notice to the Landlord and moved out of the rental unit on July 28, 2017. I find that there was no waiver from the Landlord.

I have considered whether or not the amount of the liquidated damages is a genuine pre-estimate of the Landlord's costs to re-rent the unit. I find that the amount of \$5,200.00 is more than three times the monthly rent of \$1,400.00.

I have considered the Landlord's explanation on how the claim amount is comprised. The Landlord submitted that \$2,100.00 is for a loss of commission; \$550.00 for liquidated damages; and an additional \$2,550.00 to bring the claim amount to the amount of \$5,200.00.

I find that the Landlord's contract with a property management company for collecting rent, and enforcing the terms of the lease, is not a cost he can apply towards liquidated damages. The Landlord's decision to hire a property management firm is a cost of doing business as a Landlord and I find that the Tenant is not responsible for the costs associated to that contract.

I find that \$5,200.00 is not a genuine pre-estimate for the costs associated with having to re-rent the unit. I find that the amount \$5,200.00 is not a reasonable amount and it constitutes a penalty.

I grant the Landlord the amount of \$550.00 for liquidated damages.

Security Deposit and Pet Damage Deposit

I find that the Landlord was obligated to arrange a move out inspection with the Tenant at the end of the tenancy. The Landlord must offer the Tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the Tenant is not available the Landlord must propose a second opportunity to the Tenant by providing the Tenant with a notice in the approved form.

I find that the Landlord told the Tenant she was no longer welcome on the rental property. The Landlord did not provide any testimony that he issued the Tenant a

Notice of Final Opportunity to Schedule a Condition Inspection. There is no such Notice in the evidence before me.

I find that the Landlord breached his obligation under section 35 of the Act and his right to claim against the security deposit and pet damage deposit is extinguished pursuant to section 36 (2) of the Act.

I grant the Tenant the return of the security deposit of \$700.00 and the pet damage deposit of \$700.00.

An arbitrator has the authority to set off any awards granted to the Landlord against the deposits. The deposits will apply against any successful claims awarded to the Landlord.

The Landlord was successful with the following claims:

Floor Repair	\$58.00
Yard Repair	\$50.00
Window Cleaning	\$41.00
Deck	\$18.40
Closet Door	\$10.00
Front Door Lock	\$119.75
Curtain and Rod	\$90.37
Liquidated Damages	\$550.00
Total	\$937.52

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord's claim was partially successful, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I authorize the Landlord to retain the amount of \$1,037.52 from the security deposit and pet damage deposit in full satisfaction of the awards.

I order the Landlord to return the balance of \$362.48 to the Tenant. I grant the Tenant a monetary order in the amount of \$362.48.

Conclusion

The Tenant ended the fixed term tenancy early. The Landlord was successful with claims for damage and repairs and liquidated damages in the amount of \$937.52

I authorize the Landlord to retain the amount of \$1,037.52 from the security deposit and pet damage deposit in full satisfaction of the awards and the cost of the filing fee.

I order the Landlord to return the balance of \$362.48 to the Tenant. I grant the Tenant a monetary order in the amount of \$362.48.

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: July 16, 2018

Residential Tenancy Branch