Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDCT, MNSD, FFT
Landlord: MNDL-S, FFL

Introduction

This hearing was convened as a result of the Applications for Dispute Resolution by both Parties under the *Residential Tenancy Act* ("Act"). The Tenant applied for a monetary claim of $1,010.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, including the return of double her security deposit, and to recover the cost of her filing fee.

The Landlord applied for $1,495.87 in compensation for damage caused by the Tenant, their pets or guests to the unit, site or property against the pet or security deposit, and for recovery of the filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had had time to review it prior to the hearing.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation under the Act, and if so, in what amount?
- Is the Landlord entitled to a monetary order for damage or compensation under the Act, and if so, in what amount?
- Is the Tenant entitled to return of her security deposit, and if so in what amount?
- Is either Party entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the tenancy began in June 2005 with a monthly rent of $700.00, and that the Tenant paid the Landlord a security deposit of $350.00. The Parties agreed that they had an oral tenancy agreement, as nothing was written down., including there having been no condition inspection report completed on move in or move out.

The Tenant submitted a Monetary Order Worksheet in which she said her security deposit was $335.00; however, in the hearing the Parties agreed that it had been half of the rental payment or $350.00.

The Parties agreed that the Tenant vacated the rental suite on August 31, 2018. The Tenant said she gave the Landlord her forwarding address on September 17, 2018, although the Landlord said that she did not receive the Tenant's forwarding address until she was served with the Tenant's Application.

The Tenant said she mailed the Application and documentary evidence to the Landlord on January 21, 2019, and the Landlord agreed that she had received it. Pursuant to section 90 of the Act, the Landlord was deemed to have received the Tenant's Application package five days after mailing or on January 26, 2019.

Rent Increase

The Tenant claims that the Landlord raised the rent above the amount allowed by the RTB, and she applies to be reimbursed for her overpayment. The Tenant said she was paying $825.00 in rent in October 2017, and that the Landlord raised it to $900.00 or a 9.1% increase. The Tenant said she believed the allowable rent increase per year was 2.5%.

In the hearing, the Landlord said:

> In all the years that [the Tenant] lived with us, we only had a verbal agreement. I said to her, your rent increase will be $25 and an increase for your Hydro will be $50.00. She only had one increase of $50, which was put in there because the Hydro was so high. Until that point Hydro was included. She did agree to it because she paid it for 4 – 5 months until I gave her a notice.

The Landlord said the Tenant knew that $50.00 of the increase was for Hydro, because it was over the amount she was allowed to increase the rent.

Return of Security Deposit

The Tenant applied for an order for the return of her security deposit. The Tenant submitted a copy of an email in which she gave the Landlord her forwarding address and asked for the return of her "damage deposit" on September 17, 2018 at 7:00 a.m. However, the email is from one of the Tenant's email addresses to the Tenant's work email address. This may be for the purpose of printing off the email; however, it does not establish that it was sent to the Landlord's email address, so I give it limited weight in my considerations.

During the hearing, the Landlord addressed why she thought she should keep the security deposit. She said the Tenant painted the white front door red, and the oak cabinet in the bathroom white, as well as having broken a light fixture. The Landlord also said the Tenant left belongings in the shed that she had to take to the dump.

The Landlord applied to the RTB for a monetary order for damages, applying to claim against the security deposit on January 29, 2019.

The Tenant said that she asked permission before doing anything and that the Landlord said she could paint, as long as it was at the Tenant's expense. The Landlord said she allowed the Tenant to paint, but that the Tenant had to return the rental unit to the original colour at the end of the tenancy. The Parties agreed that there was nothing in writing in this regard.

The Tenant said that on August 31, 2018, she left a message for the Landlord saying she had cleaned the suite and suggesting that they do a "walk through" the next day, which was the last day of the tenancy. The Tenant said the Landlord replied with a text telling her to drop off the keys to their son. The Tenant said: "I did that and I asked him if

he wanted to do a quick walk through. I went through the suite with him and showed him everything. He said nothing. As well, I verbally told him that he could have my daughter's bike for his son, which was in the shed. He said okay fine."

The Tenant said that she sent texts to the Landlord's husband:

> …about three times to get my security deposit back, and I heard nothing. He contacted me to ask why would I think that I should get the security deposit back, since I had painted the bathroom vanity, the door cupboards, as well as some other things he mentioned that weren't relevant to the damage deposit.

The Tenant said: "Nothing was said to me prior to cleaning the suite when he and his son had come downstairs to measure the flooring for new linoleum to be put in for their son; that was why I had to leave. There were no issues, nothing was ever said to me while I was living there. I was disappointed and confused because nothing was brought up to me ahead of time." The Tenant also said that the Landlord did not do a walk through. "They didn't even view the suite with me after I cleaned it."

The Landlord said that when the Tenant moved in the Landlord's husband painted the whole suite for her. The Landlord said that the Tenant asked me if she could paint and the Landlord said she agreed. "I said that you will paint it back to normal when you leave. She asked if she could paint, but I didn't say she could paint the cupboard doors." The Landlord said the Tenant used colours such as bright red and green and did not return the suite to the original colour it was when she moved in.

The Landlord said:

> On September 8, 2018, my husband spoke to her at which time he discussed all the damages. He said she could come over and fix all the damages and move her old belongings out of the shed in the back. She did not return to pick up her belongings in our shed. There was nothing to keep, bamboo rack all torn, toaster, chairs. I took pictures before my husband took it down to the dump with my son. I have the receipt for the dump site – probably a month later.
>
> *Landlord's Claim for Damage*

The Landlord said in her application that the damages she incurred, because of the Tenant's actions included "damaged the back door, reface bathroom cabinet doors, replace kitchen light, repair bedroom closet doors, replace two aluminum blinds, clean outside storage shed, abandoned property, cleaning and repainting."

The Landlord included the following receipts or estimates for the damage that she claims in her application:

Document	Date	Details	Cost
Receipt	Sept 16/18	Dump fees	$ 24.26
Estimate	Sept. 20/18	Refacing bathroom vanity (4 doors, 2 drawers, frame and side skim)	$ 700.00
Quote	Sept 20/18	Steel door replacement	$ 562.24
		TOTAL	$1,286.50

The amount the Landlord specified in her claim with estimates or receipts is $209.37 less than the total amount she claimed in her Application. The Landlord listed, but did not explain the costs associated with the kitchen light, bedroom closet doors, aluminum blinds or cleaning and repainting. Accordingly, I have not considered these items further.

Analysis

RTB Policy Guideline #5 "Duty to Minimize Loss" sets out that where a landlord or tenant breaches a term of the tenancy agreement or the Act, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. An applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Under section 7 of the Act:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Act, if the Director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the Director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

According to Policy Guideline #16, "Compensation for Damage or Loss" ("PG #16"), the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

1. A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. Loss or damage has resulted from this non-compliance;
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

[the "Test"]

PG #16 states:

> In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement….. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Rent Increase

According to the Landlord, the rent increase imposed on the Tenant was only $25.00, but the Tenant had to pay an additional $50.00 per month to cover the increase in the Landlord's Hydro bill for the residential property. The Parties agreed that prior to this, everything was included in the rent payment.

The Parties had an oral agreement, rather than a written tenancy agreement. Section 13 of the Act requires every landlord to prepare in writing a tenancy agreement entered

into after January 1, 2004. However, section 12 of the Act states that the "standard terms" in the regulation are terms of every tenancy agreement, whether or not the tenancy agreement is in writing. In addition, section 5 states that parties may not avoid or contract outside of the Act, even in an oral tenancy.

Section 13(2)(f)(vi) of the Act requires that every tenancy agreement must set out which services and facilities are included in the rent. The Parties agreed that utilities such as Hydro were included in the amount charged for rent at the beginning of the tenancy. However, the undisputed evidence before me is that the Landlord tried to change this term and impose Hydro fees on to the Tenant in November 2017.

Section 14(2) of the Act states that "a tenancy may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment." Section 14(3) states that the requirement for agreement under subsection (2) does not apply to (b) a withdrawal of, or a restriction on, a service or facility in accordance with section 27 *[terminating or restricting services or facilities]*.

Section 27 states:

> (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
>
> > (a) gives 30 days' written notice, in the approved form, of the termination or restriction, **and**
> >
> > (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.
> >
> > [emphasis added]

There is no evidence before me that the Landlord complied with these requirements of the Act. Even if the Landlord had complied with section 27, the rent would have been reduced by the $50.00 increase pursuant to section 27(2)(b), so it would have been irrelevant to the Landlord financially. I find that the $50.00 increase equated to an increase in rent for a total increase of $75.00 in November 2017 from $825.00 to $900.00.

Policy Guideline 37 ("PG #37") addresses rent increases permitted under the Act. PG #37 states that a tenant's rent cannot be increased unless a tenant has been given proper notice in the approved form (RTB form #7), at least three months before the

increase is to take effect. A tenant's rent can only be increased once every 12 months. This is consistent with Part 3 of the Act, including section 43 (1), which states that a landlord may impose a rent increase only up to the amount:

> (a) calculated in accordance with the regulations,
> (b) ordered by the director on an application under subsection (3), or
> (c) agreed to by the tenant in writing.

PG #37 also says that a tenant's payment of a rent increase greater than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

As set out in section 6 of the Schedule to the Regulation:

> (3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy office for assistance.
>
> (4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy office.

The allowable rent increase for 2017 was 3.7%.

As there is no evidence before me that there had been other rent increases in the preceding year, the Landlord was allowed to increase the Tenant's rent in November 2017 by 3.7% of $825.00 or $30.53 per month to $855.53. Accordingly, when the Landlord increased the rent to $900.00, she overcharged the Tenant by $44.47 a month from November 1, 2017 to August 31, 2018.

Further, based on the evidence before me overall, I find that the Landlord did not give the Tenant three months' written notice in the approved form, and she increased the rent beyond what is allowed by the Regulation. As a result, I find that the rent increase in this situation was invalid and I cancel it.

Section 43(5) of the *Act* states:

> **43** (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

PG #37 states:

> If a landlord collects an unlawful rent increase, the tenant may deduct the increase from rent, or may apply for a monetary order for the amount of excess rent collected.

Based on the above, I find that the rent increase the Landlord imposed on the Tenant was contrary to the Act, Regulation and Policy Guidelines; accordingly, there was no rent increase, so the Landlord overcharged the Tenants by $900.00 - $825.00 = $75.00 per month. This illegal rent increase went from November 2017 to the end of the tenancy in August 2018 or 10 months, so the Landlord overcharged the Tenants by $750.00. I, therefore, award the Tenant **$750.00**.

Security Deposit

The Tenant submitted that she gave the Landlord her forwarding address in an email dated September 17, 2018. Although I gave that limited weight in my considerations, it is substantiated by her evidence that she sent the Landlord's husband texts in this regard:

> …about three times to get my security deposit back, and I heard nothing. He contacted me to ask why would I think that I should get the security deposit back, since I had painted the bathroom vanity, the door cupboards, as well as some other things he mentioned that weren't relevant to the damage deposit.

It is further substantiated by the Landlord's evidence:

> On September 8, 2018, my husband spoke to her at which time he discussed all the damages. He said she could come over and fix all the damages and move her old belongings out of the shed in the back.

The Landlord's record of this conversation is consistent with the Tenant's evidence of her communication with the Landlord's husband about her security deposit and giving them the forwarding address for this purpose. Based on the evidence before me overall, I find it more likely than not that the Tenant gave the Landlord her forwarding address in an email on September 17, 2018.

Section 38(1) of the Act states:

> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the $350.00 security deposit within fifteen days of September 17, 2018, namely by October 2, 2018, or make an application for dispute resolution, claiming against the security deposit. The Landlord provided no evidence that she returned any amount of the security deposit to the Tenant; she did not apply to the RTB to claim against the security deposit until January 29, 2019. Therefore, I find the Landlord has not complied with her obligations under Section 38(1) of the Act.

As a result, section 38(6)(b) of the Act applies:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[emphasis added]

I find the Landlord must pay the Tenant double the amount of the security deposit. There is no interest payable on the security deposit, so I award the Tenant **$700.00** for the return of double the security deposit.

Landlord's Claim for Damages

Document	Date	Details	Cost
Receipt	Sept 16/18	Dump fees	$ 24.26
Estimate	Sept. 20/18	Refacing bathroom vanity (4 doors, 2 drawers, frame and side skim)	$ 700.00

Quote	Sept 20/18	Steel door replacement	$ 562.24
		TOTAL	$1,286.50

Dump Fees

The Regulation states that upon removal of a tenant's personal property, a landlord has a duty of care toward the tenant and her possessions. The landlord is required to handle a tenant's possessions in accordance with the Regulation:

Part 5 — Abandonment of Personal Property

Abandonment of personal property

24 (1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the residential property, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

Landlord's obligations

25 (1) The landlord must

(a) store the tenant's personal property in a safe place and manner for a

period of not less than 60 days following the date of removal,

(b) keep a written inventory of the property,

(c) keep particulars of the disposition of the property for 2 years following the date of disposition, and

(d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.

(2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that

(a) the property has a total market value of less than $500,

(b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or

(c) the storage of the property would be unsanitary or unsafe.

(3) A court may, on application, determine the value of the property for the purposes of subsection (2).

Tenant's claim for abandoned property

26 (1) If a tenant claims his or her personal property at any time before it is disposed of under section 25 or 29 *[disposal of personal property]*, the landlord may, before returning the property, require the tenant to

(a) reimburse the landlord for his or her reasonable costs of

(i) removing and storing the property, and

(ii) a search required to comply with section 27 *[notice of disposition]*, and

(b) satisfy any amounts payable by the tenant to the landlord under this Act or a tenancy agreement.

(2) If a tenant makes a claim under subsection (1), but does not pay the landlord the amount owed, the landlord may dispose of the property as provided by this Part.

Accordingly, it was inconsistent with the above noted sections of the Regulation to have taken the Tenant's belonging to the dump, so I find that reimbursing the Landlord for the cost of disposal of the personal property is inappropriate. As such, I do not award the Landlord anything for this claim.

Bathroom Vanity

The Landlord claims that the Tenant painted the bathroom vanity without the Landlord's

permission. As noted above, the Landlord's evidence did not establish that she qualified her permission for the Tenant to paint the rental unit, specifying what could and could not be painted.

Further, the Landlord's claim of $700.00 for the bathroom vanity is an estimate, not an incurred cost. Further, it is only one estimate, as opposed to the best of three estimates. This indicates that the Landlord did not mitigate her loss by investigating the options open to her.

The Tenant's evidence was that the bathroom vanity was old and that she had lived there for thirteen years, so it was at least that old. The Tenant's evidence was that the rental suite was not newly renovated when she moved in, so I find it more likely than not that the bathroom vanity was at least 15 years old when she moved out.

Policy Guideline #40, "Useful Life of Building Elements" ("PG #40"), states that bathroom and kitchen cabinets and counters have a useful life of 25 years. In establishing the value of the vanity, I find that 15 years means that it was 60% into its useful life. Given this and that the Landlord did not mitigate her damage in this regard, I grant the Landlord 30% of the cost she estimated having incurred or **$210.00** of her $700.00 estimate.

Steel Door Replacement

The Landlord said that the Tenant painted the steel door, of which the Landlord did not approve beforehand. Again, the undisputed evidence before me is that the Landlord allowed the Tenant to paint the rental unit without having qualified that some items should not be painted. As such, I do not consider the painting of the door to have been a breach of the Act. However, the evidence before me is that the Tenant's ex-husband kicked and dented the steel door, which is the reason the Landlord claims that it must be replaced. I find that this meets the first two stages of the Test.

As with the bathroom vanity, the Landlord has not replaced the steel door, but has provided a quote of how much it will cost to replace it.

PG #40 states that doors have a useful life of 20 years. Other categories in PG #40 refer to "steel" as the material of the items in some cases, but not for doors. Accordingly, I find it is more likely than not that it does not matter what the door is made of when establishing a useful life.

There is no evidence before me that the door was new to the rental unit after the tenancy began in 2005. I find that the steel door was at least 13 years old at the end of the tenancy on August 31, 2018. As such, its value was depreciated by 65% at that point.

There is no evidence before me that the Landlord investigated whether the door could be fixed, rather than replaced. Further, she only submitted one replacement quote, although the handwritten comment on the quote is that it is "cheapest steel door to replace". Without substantiation as to the basis for this comment, I do not accept that the Landlord investigated other options. As such, I find that she did not mitigate this claim. I, therefore, decrease the value of claim by one year of useful life. The remaining useful life of the steel door was, therefore, six years or 30% of its original value. As such, 30% of the cost of a new door is: 30% x $562.24 = $168.67. I award the Landlord **$168.67** for the damage incurred to the steel door.

The two sets of monetary awards are set off against each other as follows. The Tenant is awarded a total monetary order of **$1,450.00**. The Landlord is awarded a total monetary order of **$378.67**. After the set off of the amount owing to the Landlord, the Tenant is owed **$1,071.33**.

Since both Parties were partially successful in their applications, I do not award either the recovery of the **$100.00** filing fee.

Conclusion

Both Parties' applications were partially successful.

The Tenant has established a monetary claim of **$1,450.00** and the Landlord has established a monetary claim of **$378.67**. When these awards are set off against each other, the Tenant is left with a net award of **$1,071.33**.

I grant the Tenant a monetary order under section 67 of the Act for reimbursement of the overpayment of rent due to the illegal rent increase in the amount of $750.00, and for return of double the security deposit for a total of $700.00. The net monetary order granted is for a total of **$1,071.33**.

This order must be served on the Landlord by the Tenant and may be filed in the British Columbia Provincial Court (Small Claims) and enforced as an order of that court.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings, section 77(2) of the *Act* states that the Director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period set out in subsection (1)(d).

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: April 18, 2019

Residential Tenancy Branch