



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD MNDC, FF
Landlord: MNDL-S

Introduction

This hearing was convened in response to cross-applications by the parties.

The landlord filed on February 08, 2019 for Orders as follows;

1. A monetary Order for damage – holding deposits – Section 67
2. An Order to retain the security deposit in full satisfaction of their claims – Section 38

The tenant filed on May 01, 2019 for Orders as follows:

1. An Order for return of security deposit - Section 38
2. A monetary Order for loss – their costs to respond to the landlord's application and advance their own – Section 67
3. An Order to recover the filing fee for their application - Section 72.

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The tenant acknowledged receiving the application and all the evidence of the landlord. The landlord claims they did not receive the application or evidence of the tenant. The tenant provided proof they sent their application and all of their evidence to the landlord via ExpressPost, with required signature confirmation defined by the Act as registered mail (*a method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available*). The tenant provided the tracking number indicating the mail was sent to the landlord's confirmed address and that 2 attempts were made to deliver the mail and on both occasions *carded* by Canada Post. The landlord acknowledged they did not pick up the registered mail.

I found that the landlord was served in accordance with the Act, for the purpose of the Act, and this matter. Therefore the hearing proceeded on the merits of both applications.

Despite their abundance of evidence only *relevant* evidence has been 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.

Preliminary matters

The parties agreed that this matter encompasses 2 separate tenancies within the same residential property between the same parties of this matter: upper and lower suites under separate tenancy agreements beginning in 2014, each tenancy running almost concurrently, and both ending on the same date of January 31, 2019. The parties agreed they wanted the issues of both tenancies (hereafter referred to as *the tenancy*) resolved by this hearing.

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 ended January 31, 2019. The undisputed evidence in this matter is as follows. The tenancy began as a written tenancy agreement. The hearing had benefit of the written Tenancy Agreement(s). At the outset of the tenancy the landlord collected security deposits and a pet deposit in the sum of \$1075.00 which the landlord retains in trust. The parties agree there was a *move in* condition inspection at the outset of the tenancy which was recorded and signed by both parties. At the end of the tenancy the parties agreed to conduct a mutual condition inspection on January 31, 2019 at 9:00 a.m. at which date and time the tenant was present, but the landlord was not, albeit they attended later than scheduled. The parties agreed that at the time they had scheduled the inspection event they were equally aware that the tenant's window of availability for the inspection was dictated by circumstances beyond their control. As a result the

parties agreed that when the landlord ultimately arrived the tenant was compelled to immediately leave and the landlord conducted their own inspection. The landlord testified they did not provide a copy of their inspection to the tenant. The landlord testified they found various deficiencies and damage in the unit, primarily, but not limited to certain unauthorized alterations of the unit and damaged laminate flooring. The tenant agreed they had adhered new, different ceiling tiles over the existing ceiling tiles in the lower unit but had not removed them prior to the end of the tenancy. The tenant also acknowledged wallpapering in the unit and which wallpaper they did not remove prior to the end of the tenancy. The tenant claimed they alterations were for the betterment of the unit but that they were not authorized by the landlord. The landlord provided photo images depicting the ceiling and walls post removal of the ceiling tiles and wallpaper each still showing their respective adhesives. The landlord provided photo images of the laminate flooring which they claim was discolored and scratched and each caused during the tenancy. The tenant acknowledged that the laminate flooring was marred by scratches, but that they had applied a remedy to the flooring obtained from a renovation outlet to mitigate or conceal the anomalies. The tenant testified the claimed damage to the flooring was reasonable wear and tear for a 4 year tenancy. The landlord provided photo images of mould in the window frames of the laundry room and indications of patching residue of holes in window frames, claimed by the landlord to be from installation of unauthorized window coverings. The tenant denied the latter claim as damage existing at the start of the tenancy but not noted on the *move in* condition inspection report. The landlord also claimed that the tenant left the rental unit dirty, which the tenant denied. The tenant in turn provided photo images in response to counter the landlord's claim, all showing that the units were left reasonably clean.

The parties agreed that the tenant provided their written *forwarding address* prior to the end date of the tenancy.

Landlord's application

The landlord seeks costs for damage to the ceilings and walls due to the tenant's unauthorized ceiling installation and wallpapering, as well as for scratches to the laminate flooring, and cleaning of the rental unit(s) to the limit of the deposits held in trust - for a total claim of \$1075.00.

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 tenant also seeks \$2600.00 as their

litigation costs to advance their application and to counter the landlord's – for a total claim of \$4750.00.

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 *the relevant* evidence submitted, and on balance of probabilities, I find as follows.

Landlord's claim

I find that **Residential Tenancy Act Regulation 17(3)** states as follows,

Two opportunities for inspection

17 (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that both parties, equally cognoscente of the tenant's time limitations, none the less mutually agreed to a condition inspection event which the landlord effectively did not attend due to them arriving later than agreed. As a result, I find that pursuant to **Section 36(2)** of the Act, by not participating in the move out inspection the landlord's right to make a claim against the deposits for damage to residential property has been *extinguished*.

I find that despite the landlord's failing above, they made an application for dispute resolution within the required 15 days to do so, thereby complying with subsection **(1)** of **Section 38** of the Act. However, as the landlord's right to make a claim against the deposits for damage is extinguished, their application for damage is **dismissed**, without leave to reapply.

Tenant's claim

A party is not entitled to litigation costs associated with advancing their application or defending a claim against them. All parties are equally responsible for their own such

discretionary costs. As a result the tenant's claim for their litigation costs of \$2600.00 is **dismissed** without leave to reapply.

I find that **Section 38(1)** of the Act provides as follows (**emphasis mine**):

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

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(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;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

Section 38(6) provides:

38(6) If a landlord does not comply with subsection (1), 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.

I find the landlord complied with Section 38(1) and filed for dispute resolution on February 08, 2019, within 15 days of the tenancy ending as they were required to do; therefore the tenant is not entitled to the doubling provisions set out above. None the less, as the landlord has no right to the deposits it is only appropriate that I return the original deposits held in trust to the tenant. As the tenant has been successful in their

application and applied to recover their filing fee, I find they are further entitled to this recovery from the landlord for a sum awarded to the tenant in the amount of **\$1175.00**.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$1175.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant's application has been granted in the above terms.

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: May 29, 2019

Residential Tenancy Branch