



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER LUXURY REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Tenant: MNDCT MNSD FF
Landlord: MN DL - S, FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:.

The landlord filed on June 15, 2019 for Orders as follows;

1. A monetary Order for damage – holding deposits – Section 67
2. An Order to recover the filing fee for this application - Section 72.

The tenant filed on June 25, 2019

1. An Order for return of the security / pet damage deposits of the tenancy - Section 38
2. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and respectively acknowledged receiving all the evidence of the other as submitted to the proceeding. The parties were given an opportunity to discuss and settle their dispute, to no avail. 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 the *relevant* evidence that they wished to present.

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 has ended. The undisputed evidence in this matter is as follows. The tenancy began June 01, 2016 as a written tenancy agreement. The hearing had benefit of the written Tenancy Agreement. The payable rent was in the amount of \$4000.00 due in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit each in the amount of \$2000.00 (\$4000.00) which the landlord retains in trust. The parties agree there was a *move in* condition inspection at the outset of the tenancy. And, there was a *move out* condition inspection conducted by the tenant and the landlord. Both parties provided a copy of the requisite Condition Inspection Report (CIR). The parties' agreed testimony is that it was completed May 31, 2019. It is undisputed the tenant provided the landlord with a written forwarding address on the same day. Despite both parties signing the CIR the parties *did not indicate agreement* as to the administration of the tenancy deposits. None the less, the tenant indicated the CIR fairly represented the condition of the rental unit at the end of the tenancy, as they had also indicated at the start of the tenancy. It is undisputed the tenant received a copy of the CIR on June 17, 2019, two (2) days after the landlord filed for dispute resolution against the tenancy deposits on the last day of the 15 days permitted to so pursuant to Section 38(1) of the Act, whilst holding the tenancy deposits.

Landlord's application

The landlord seeks the mitigated cost of 40% of their *receipted* cost of \$11,900.00 for replacing a quantum of carpeting comprising 5 areas of the rental unit (the carpeting) in the amount of \$4000.00. The landlord claims the condition of the carpeting was beyond reasonable wear and tear, or damaged. The landlord identified the 5 areas of the carpeting as:

Living room, Master bedroom, Basement living room, Upstairs small bedroom, and Basement bedroom.

The tenant does not dispute that 3 of the 5 identified areas of the carpeting were left damaged, however that one area, the living room, was identified at the start of the tenancy as having "some brown stains and black marks". The tenant disputes the entire master bedroom as stained, rather, solely the bedroom's 'sitting room', which the parties agreed is not secluded from the bedroom itself. The landlord claims the 2 disputed areas as the Basement living room and a Basement bedroom.

The parties argued about the relevancy of human-caused carpet damage versus pet-caused carpet damage and the extent of carpet damage generally. The landlord and tenant provided photo images in support of their version of the claimed damage. The parties also provided contrasting testimony in respect to the size of the carpet damaged areas but without supporting evidence. The landlord provided evidence the the rental unit carpeting was 6 years old at the end of the tenancy. The parties acknowledged that the useful life for carpeting according to **Residential Tenancy Policy Guideline 40** as 10 years.

Tenant's application

The tenant seeks the return of their deposits and compensation pursuant to Section 38 of the Act of double the dual tenancy deposits. The tenant argued that the landlord's right to file against the tenancy deposits was extinguished because they were sent the completed CIR by the landlord following the time prescribed by Regulation. The landlord acknowledged sending the tenant the signed /completed CIR 2 days after filing their application June 15, 2019. The tenant also argued that the landlord's claim was not specifically for 'pet damage'.

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 claims on balance of probabilities. On preponderance of all evidence submitted, and on balance of probabilities, I find as follows:

Tenant's claim

Section 38(1) of the Act provides as follows (**emphasis added**):

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.

I find the tenant provided their forwarding address May 31, 2019 and the landlord filed their application within the required 15 days to do so in accordance with **Section 38(1)(d)** as prescribed by the Act. **Section 38(6)** states that the doubling provisions apply if the landlord *does not* comply with **Section 38(1)**. In this matter I find the landlord may have complied with Section 38(1)(d) of the Act, however their right to do so was extinguished pursuant to Section 36(2)(c) of the Act because they did not comply with Residential Tenancy Regulation 18(1)(b),

Section 36(2)(c) of the Act states as follows, **(emphasis added)**

Consequences for tenant and landlord if report requirements not met

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Regulation 18(1)(b) states as follows, **(emphasis added)**

Condition inspection report

18 (1) The landlord **must** give the tenant a copy of the signed condition inspection report

(a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b) of an inspection made under section 35 of the Act, promptly and in any event **within 15 days after the later of**

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

As a result, the landlord was obligated to return the tenancy deposits, but which did not nullify the landlord's right to claim for monetary damages arising out of the tenancy, including damage to the rental unit, which I find is the case in this matter. None the less, resulting from the above, **Residential Tenancy Policy Guideline 17. C.3.** states as follows: **(emphasis added)**

C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the Arbitrator will order the return of double the deposit

- if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- **if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;**
- if the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the dispute resolution process;
- if the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.

Therefore, the tenant is entitled to double the amount of their deposits in the sum of **\$8000.00.**

Landlord's claim

Under the *Act*, a party claiming a loss bears the burden of proof. Moreover, an applicant for loss (the landlord of this matter) must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

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.*

(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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the evidence in this matter is that in accordance with the appropriately completed and signed CIR the tenant agreed with all the 5 carpeted areas identified in the CIR as being stained or damaged. As a result, I find the landlord is owed *the lesser* of the mitigated portion **(40%)** of their receipted cost of \$11,900.00, or their claim on application of \$4000.00. Therefore, I grant the landlord their claim of **\$4000.00**.

As both parties are entitled to recover their filing fee from the other in calculation they both cancel.

Calculation for Monetary Order:

Tenants award	\$8000.00
Landlord's award	- \$4000.00
Monetary Order to tenant	\$4000.00

Orders

I Order the landlord may retain the security and pet damage deposits of the tenancy in the sum of \$4000.00 in full satisfaction of their claim.

I grant the tenant a **Monetary Order** under Section 67 of the *Act* in the amount of **\$4000.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The parties' respective applications have 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: October 02, 2019

Residential Tenancy Branch