



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant: MNSD
Landlord: MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties. The landlord filed on July 09, 2019 for Orders as follows;

1. A monetary Order for damage – Section 67
2. An Order to retain the security deposit – Section 38
3. An Order to recover the filing fee for this application - Section 72

The tenant filed on July 13, 2019 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38
2. An Order to recover the filing fee for this application - Section 72

Both parties attended the hearing and were given an opportunity to discuss and settle their dispute, to no avail. The parties respectively acknowledged receiving all the evidence of the other. Despite their abundance of evidence only *relevant* evidence would be 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, 2018 as a written tenancy agreement for a furnished rental unit. The hearing had benefit of the written Tenancy Agreement and a copy of a document itemizing the furnished inventory of the rental unit. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1800.00 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 between the tenant and the landlord. A copy of the requisite Condition Inspection Report (CIR) was submitted by the tenant and the landlord. Despite the entries the parties *did not agree* as to the administration of the security deposit and the tenant did not agree that the report was a fair representation of the condition of the rental unit at the end of the tenancy.

The tenancy ended June 25, 2019 and the tenant provided the landlord with a written forwarding address on the same date. The landlord then filed their application within the required 15 days to do so for damage and to retain the deposit in satisfaction of their claim.

Landlord's application

The landlord seeks the cost for a plumber's invoice respecting water ingress to the unit below the rental unit, from the rental unit washroom. The invoice states the plumber's work, of 12.5 hours, used toward isolating the water leakage, found to be emanating from the rental unit tub 'overflow'.

The plumber's invoice totalling \$1107.23 states,

*“(plumber) attended the rental unit on February 21, 2019. Found no sign of a leak from the toilet, sinks or tub in unit #407. Discovered that overflow from the tub was spilling into the unit below and required replacement. ***Further action required: replace the bathtub overflow in unit #407. Quote #15584460 to follow.***” – as written, unit number adjusted by consent.*

the tenant explained that the bathtub has never overflowed above the sides of the tub; but rather, the word “overflow” in this matter referred to the tub *overflow prevention drain* above the tub's main drain. They testified that the plumbers were inside the rental unit and that their analyses was that a faulty seal around the tub's overflow drain caused water to leak beneath the tub and to below their unit. The tenant testified they were not aware of the tub's overflow drain failure, purportedly a seal or 'O' ring at the rear of the overflow drain. The landlord's interpretation of the invoice and word

“overflow” is that of “overflowing of the bathtub”. The landlord seeks the tenant be found responsible for an overfilling of the tub causing an overflow and resulting loss of \$1107.23.

The landlord also seeks a quantum for general cleaning, cleaning the fireplace, nearby carpeting, and behind the stove and refrigerator. The landlord also seeks to recover their cost to print photo images and for a piece of tin in the amount of \$3.44.

The landlord provided a series of photo images in support of their claim for cleaning several areas of the rental unit. The parties were apprised during the hearing that a tenant is not responsible for cleaning behind large appliances unless these appliances have wheels, or the landlord moves the appliances out from their positions so as the respective areas can be accessed by the tenant. The parties agreed the appliances were not on wheels. None the less, the tenant agreed to the landlord retaining \$200.00 of the security deposit in some compensation for general cleaning, as portrayed by the landlord.

Tenant's application

The tenant seeks the return of their deposit of \$1800.00.

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

I find that the landlord made their application against the security deposit within the required time to do so pursuant to Section 38(1) of the Act.

Under the *Act*, a party claiming damage or loss bears the burden of proof. Moreover, the applicant 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.*

On balance of probabilities, I find the tenant's evidence, and that of the landlord's invoice, represents that the plumber's reference to 'overflow' is that of an overflow drain, and not an overfilling and overflowing of the bathtub, as interpreted by the landlord. I prefer the tenant's evidence as the more likely version of the facts in this matter. As a result, I find the tenant as not responsible for the damage the landlord attributes. Therefore, the landlord's claim of \$1107.23 is **dismissed**, without leave to reapply.

Section 37 of the Act, in relevant part states: (emphasis mine)

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit **reasonably clean**, and undamaged except for reasonable wear and tear

I find that the landlord's claim for cleaning has some merit, primarily evidenced by the parties' CIR and the tenant's acknowledgement in allowing the landlord \$200.00 for cleaning in general. The landlord did not aptly provide what they were claiming for cleaning, however, I am satisfied the landlord is owed an amount for cleaning. I find that a reasonable amount concurs with the tenant's offer of **\$200.00**, which I grant the landlord, without leave to reapply.

It must be noted that each party is responsible for their own litigation or court costs which they may incur to advance claims on application, such as photo images processing. Therefore, such costs are **dismissed** without leave to reapply.

As both parties were in part successful in their application they are each entitled to recover their filing fee from the other, which mathematically cancel in calculation. The security deposit in trust will be offset from the awards made herein.

Calculation for Monetary Order:

landlord's award	\$200.00
<i>Minus tenant's security deposit</i>	<i>- \$1800.00</i>
Monetary Order to tenant	(\$1600.00)

I Order the landlord may retain \$200.00 from the tenant's security deposit and return the balance of \$1600.00 to the tenant, forthwith.

I grant the tenant a **Monetary Order** under Section 67 of the Act in the amount of **\$1600.00**. 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, in part, have been granted.

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 16, 2019

Residential Tenancy Branch