Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, FFL**
FFT, MNSDB-DR

Introduction

This hearing dealt with cross applications filed by the landlord and the tenant pursuant to the *Residential Tenancy Act* (the "*Act*").

The landlord applied for:

- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- Authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- An order for the return of a security deposit or pet damage deposit by direct request, pursuant to section 38.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. Each party acknowledged receipt of one another's Application for Dispute Resolution and both stated they had no concerns with timely service of documents.

Preliminary Issue

This is the second application filed by the tenant regarding her security deposit. The first application was dismissed with leave to reapply and the file number for that dispute is recorded on the cover page of this decision.

Issues to be decided

Is the landlord entitled to compensation for damages to the rental unit?

Can the landlord recover the filing fee?
Should the tenant's security deposit be returned to her (doubled)?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is an entire single-family home with a secondary unit located in the basement. Although there are two tenants named on front page of the tenancy agreement, the male tenant moved out shortly after the tenancy began. The female tenant and her two adult children signed the addendum to the tenancy agreement and the parties acknowledge that those three people are the tenants. A condition inspection report was conducted with both the landlord and the tenant present on October 29, 2017 and was supplied as evidence by both parties. The condition inspection report is not signed by either party, however the tenant acknowledges receiving a copy of it after the inspection.

A copy of the tenancy agreement was also provided as evidence. The month to month tenancy began on November 1, 2017 with rent set at $2,300.00 per month. The tenant, however moved in early on October 28, 2017 with the landlord's consent. A security deposit of $1,150.00 and a pet damage deposit of $500.00 was collected which the landlord continues to hold.

The tenant gave the following testimony. She has been living in the lower mainland of BC for the last 2 years and rents a room on the mainland. She commutes between there and this rental unit from time to time. The two adult children remained living in the house with the landlord's permission. To help with finances, the tenant was given the landlord's permission to rent out the lower unit of the house to sub-tenants. Permission to sublet was given in writing on June 28, 2019 however this document was not provided as evidence by either party for this hearing. The landlord acknowledged that

he was reluctant to allow the sublease because he didn't want just the young adults as tenants.

The tenant testified that she ended the tenancy with a notice to end tenancy to the landlord. The last day of the tenancy was June 30, 2020 and her daughter attended the condition inspection report (move-out) with the landlord at 10:00 a.m. on June 30th.

The tenant's daughter JF was called as a witness. The witness testified that she and the landlord only did a walkthrough of the upper unit and not the lower unit because the people living in the lower unit were still in the process of moving out. The landlord's daughter testified that she does not recall seeing lots of garbage left behind in the unit.

The tenant testified that she sent the landlord her forwarding address by registered mail on July 16, 2020. A copy of the forwarding address letter and the tracking number were provided as evidence by the tenant and the landlord acknowledges receiving it sometime in the middle of July. The tenant filed her initial direct request application for a return of the security deposit on August 12, 2020.

The landlord gave the following testimony. He was confused by the Residential Tenancy Branch adjudicator's decision that dismissed the tenant's first application for a return of the security deposit. He decided to wait to see what happened with the tenant's application. He did not return the security deposit to the tenant or file an Application for Dispute Resolution Proceedings Package immediately.

Photos of the rental unit were taken and emailed to the tenant from the initial condition inspection report done with her on October 29, 2017. Before the tenant moved in, he had the chimney swept so she could use it. After she left, the chimney was left dirty and the landlord seeks to have it re-swept although he testified the next set of tenants are not allowed to use the wood burning fireplace. The tenant countered that the landlord sent her a text on November 2, 2019 advising her not to use the fireplace due to safety concerns. She testified she only used it occasionally before November 2nd for Christmas and special occasions and has not used it since.

The landlord testified that on June 30th, there was so much trash left behind that it was impossible to properly conduct a condition inspection report. The tenant's daughter was in a rush to leave, so she asked the landlord to make arrangements with her mother to conduct another one with the mother. Multiple texts were sent back and forth between the landlord and the tenant, however none of them were supplied to me as evidence. The landlord testified that the tenant sent a cleaner in to do some cleaning, but that it

wasn't enough. Texts sent between July 8 and July 11th (read into the record) indicate the tenant acknowledged that garbage was left behind and that the tenant was willing to pay a reasonable cost for having the garbage removed. On July 9th, the landlord advised her the trash removal company quoted $300.00 for the work but the tenant did not respond to the quote. The landlord testified that during the condition inspection report, the landlord told the tenant's daughter that he didn't want to do the work of cleaning up that is the tenant's responsibility. The reason the condition inspection report was not signed with the daughter is because the daughter told him her mother would come back and do the condition inspection report with him after the place had been cleaned.

The landlord provided an estimate of his costs for cleaning. Included in that estimate are costs for repairing a closet door and fixing a broken faucet. The majority of the estimate is for cleaning, moving garbage and repairing floors and doors. Photos of the rental unit taken at the end of the tenancy were provided as evidence. The landlord testified that the downstairs bathroom had water stains on the baseboards and damaged doors on the bathroom vanity due to the sub-tenants not taking proper care of the property.

The tenant countered that the house cleaner she hired on July 6, 2020 to clean the house couldn't return to the house because the landlord moved the key to get in. From the initial pictures sent to her by the landlord, she thought all the cleaner needed to do was clean was the appliances.

Lastly, the landlord seeks to be compensated for two weeks lost rent due to damage and cleaning. The tenant kept telling him by text that she was trying to deal with the cleaning. The landlord testified that because the tenant continued to tell him she was going to return to take care of the garbage and cleaning that he waited until she texted him on July 11th that she would file for arbitration that he could finally start with the cleaning. A new tenant was found for September 1, 2020.

Analysis

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

I will first examine the landlord's claim for damages, in order of the monetary order worksheet.

Chimney cleaning – During the hearing, the landlord was asked to provide which clause in the tenancy agreement required the tenant to have the chimney cleaned. He was unable to do so, as there was no such term in the tenancy agreement stating the tenant was responsible for this charge.

Residential Tenancy Branch Policy Guideline PG-1 [Landlord & Tenant – Responsibility for Residential Premises] provides guidance to landlords and tenants regarding their respective responsibilities. I note the following section of the guideline:

FIREPLACE, CHIMNEY, VENTS AND FANS

1. *The landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals.*
2. *The tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.*
3. *The tenant is required to clean the screen of a vent or fan at the end of the tenancy.*
4. *The landlord is required to clean out the dryer exhaust pipe and outside vent at reasonable intervals.*

I find the cleaning of the chimney was the responsibility of the landlord and I dismiss this portion of the landlord's claim.

Garbage removal

Sections 32(2) and (3) of the *Act* state:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

PG-1 states:
The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also 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 tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act.

Based on the photographs taken by the landlord at the end of the tenancy, I find the tenant did not leave the rental unit in a reasonably healthy, clean or sanitary condition, contrary to section 32 of the *Act*. The tenant, although stating she believed some of the garbage belonged to the landlord, supplied no evidence to back this up, other than her own testimony. She stated her cleaner thought the garbage would only fill a small car, however the cleaner was not called to provide this testimony to corroborate the tenant's assetion. I have reviewed the photographs taken by the landlord at the end of the tenancy and I am satisfied that the landlord is entitled to the **$299.25** he was charged by the junk removal company to remove the tenant's garbage. I award the landlord this amount, pursuant to section 67 of the *Act*.

Damages & Cleaning
Section 21 of the Regulations states:
In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.
The landlord testified that he was prepared to conduct the condition inspection report with the tenant's daughter however during testimony, the daughter admitted that the reason it couldn't be done was because "*the people downstairs were still moving out".* I find the completion of the condition inspection report upon move-out was therefore made impossible, due to circumstances beyond the landlord's control. I find it reasonable that the landlord attempted to have the named tenant attend for another one after she cleaned the unit, as promised, but that never happened because the tenant never came back to finish cleaning. For this reason, the condition inspection report will not be used as evidence of the state of repair and condition at the end of the tenancy.

Turning next to the sub-tenants, whom the landlord alleges caused the majority of the damage to the lower unit. PG-19 [Assignment and Sublet] states:
When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement). The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

…

there is no contractual relationship between the original landlord and the sub-tenant. The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement.

Following this reasoning, the landlord has no recourse against the sub-tenants for the damage caused by them. The tenant is responsible for the damages and cleaning costs of the landlord, caused by the sub-tenants.

Section 37(2)(a) of the *Act* states:
When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I am satisfied the landlord was required to clean the rental unit after the tenant and the sub-tenants vacated it, based on the photographs of the unit. The landlord's "move out expenses estimate" suggests the landlord seeks labour at $30.00 per hour for cleaning and organizing the cleaner and mover. On average in British Columbia, cleaners are compensated at $20.00 per hour and I award the landlord a total of 10 hours to clean the unit at $20.00 per hour for a total of **$200.00.**
The landlord's claim for cleaning the chimney on the estimate has already been dismissed. Pressure washing the house is not the responsibility of the tenant and I dismiss this relief. The closet door, vanity door and wood scratches I attribute to normal wear and tear to be expected for a tenancy of 3 years and I dismiss that claim as well. No photos of a broken faucet were supplied, leading to insufficient evidence to satisfy me of this aspect of the claim. Lastly, the "organizing time" claimed by the landlord is dismissed as I consider this to be an expense to be expected by a landlord when operating a residential unit for rent.

2 weeks lost rent
PG-3 [Claims for Rent and Damages for loss of Rent] states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The parties agree that the tenancy ended on June 30th, but that the lower unit was still occupied by the tenant's subtenants. The tenant clearly testified that she didn't send her cleaner in to clean the rental unit until July 6th and did not dispute the landlord's testimony when he read the text messages between the parties sent between July 8th and July 11th. When the tenant advised the landlord that she would go to arbitration on July 11th, at this point the landlord started cleaning. I find that the tenant's failure to leave the rental unit reasonably clean at the end of the tenancy and her promises to send in a cleaner to do the work led to the landlord not being able to re-rent the unit on July 1st. I find the landlord entitled to the **$442.00** for lost rent in accordance with section 67 of the *Act*.

Item	amount
Garbage removal	$299.25
Damages & Cleaning	$200.00
2 weeks lost rent	$442.00
Total	**$941.25**

Tenant's claim for security deposit

The tenant claim is for a doubling of the security deposit that was not returned within 15 days after the date the tenancy ended and the landlord received the tenant's forwarding address. The tenancy ended on June 30, 2020 and landlord acknowledges receiving the tenant's forwarding address in the middle of July, 2020. The tenant testified she sent it to the landlord on July 16, 2020 and provided the tracking number for the mailing as evidence. In accordance with sections 88 and 90 of the *Act*, the forwarding address is deemed served upon the landlord five days after mailing, on July 21, 2020.

Section 38(1) of the *Act* states that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay any security deposit or pet damage deposit or make an application for dispute resolution claiming against the security deposit or pet damage deposit. Section 38(6) of the *Act* says that if a landlord does not comply with subsection (1), the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord filed his Application for Dispute Resolution, seeking to retain the security deposit on October 2, 2020 and acknowledges he did not return the security deposit. Despite his argument that the tenant's first application for a return of the security deposit confusing him, it wasn't until after the 15 days had passed, on August 12th that the tenant filed her original application to have it returned. At this point, the time to comply with section 38 of the Act had already passed.

Residential Tenancy Branch Policy Guideline PG-17 says, in part C-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 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.

In this case, section 38(6) requires that the tenant's security deposit of security deposit of $1,150.00 and a pet damage deposit of $500.00 be doubled to $2,300.00 and $1,000.00 respectively. The tenant is awarded a monetary order for **$3,300.00.**

Both parties were successful in elements of their claim and as such, the filing fees of both parties will not be recovered.

Item	**Amount**
Award to tenant	$3,300.00
Less award to landlord	($941.25)
Total	**$2,358.75**

Conclusion

I issue a monetary order in the tenant's favour in the amount of $2,358.75.

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: January 25, 2021

Residential Tenancy Branch