



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

The Tenant and the Landlord attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Both parties agreed that the tenancy began on January 1, 2018. Rent in the amount of \$1,000.00 was payable on the first day of each month, and the Tenant had paid a security deposit of \$500.00 at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

Both the parties also agreed that this tenancy ended on June 30, 2021, in accordance with the *Act*. Both the Landlord and the Tenant attended the move-out inspection. The Landlord submitted a copy of the move-in/move-out inspection report (the "Inspection Report") into documentary evidence.

The Landlord and Tenant agreed that they got into a disagreement during the end of tenancy inspection, disagreeing on the condition of the rental unit during that inspection. The Landlord testified that due to this dispute, they ended the inspection early without completing it or the written report. The parties agreed that neither of them signed the document in evidence.

Both the Landlord and the Tenant agreed that the rental agreement for this tenancy had included a queen-sized mattress. The parties also agreed that at the end of this tenancy, the Tenant returned the rental unit to the Landlord with a different mattress than the one the Landlord had rented to the Tenant.

The Landlord testified that the mattress they rented the Tenant was only two years old at the time the tenancy began and in excellent condition. The Landlord testified that the mattress that was returned to them at the end of this tenancy was in bad shape and that they did not agree to the exchange of the mattress. The Landlord is requesting \$285.99, the cost to purchase a replacement mattress. The Landlord submitted a copy of the invoice for the new mattress and three pictures into documentary evidence.

The Tenant testified that they had permission from the Landlord to exchange the mattresses at the end of the tenancy, as the mattress they had was in better shape. The

Tenant testified that they did not have written permission to exchange the mattresses at the end of the tenancy.

The Landlord testified that they had also included a mattress cover with this rental but agreed that they did not include the mattress cover in the tenancy agreement or on the move-in inspection report. The Landlord testified that the mattress cover was missing at the end of tenancy and that they are claiming for \$26.99, the costs to purchase a new mattress cover. The Landlord submitted a copy of the invoice for the new mattress cover into documentary evidence.

The Landlord testified that they are also claiming for \$100.00 in labour costs to have the mattress the Tenant left in the rental unit disposed of at the end of the tenancy. The Landlord testified that they are claiming for one hour of labour, at \$50.00 an hour for two people to dispose of the mattress.

The Tenant agreed that they left this mattress in the rental unit at the end of the tenancy but that \$100.00 for labour to dispose of this item was too high.

The Landlord testified that they also rented the Tenant a microwave and that this item was damaged at the end of tenancy. The Landlord is requesting \$333.22 for the purchase of a new microwave. The Landlord submitted a copy of the invoice for the new microwave into documentary evidence.

The Tenant testified that they did not damage the microwave but that the microwave malfunctioned during regular use. The Tenant testified that they reported the malfunction to the Landlord right away but that the Landlord did not attempt to fix the item during their tenancy. The Tenant submitted a picture of the item they were microwaving at the time of the malfunction.

The Landlord was asked if they had attempted to have the microwave repaired or determine what had caused the damage; the Landlord responded that they had not. The Landlord was asked to speak to what the Tenant had done to damage the microwave. The Landlord responded that they did not know but that the microwave was damaged during the tenancy, so the Tenant was responsible for the costs to buy a new one.

The parties to this dispute agreed that there was a \$7.16 gas bill and a \$10.77 hydro bill outstanding at the end of this tenancy. The Tenant testified that they never disagreed with these bills but that they were just waiting for the Landlord to send them a payment

request and a copy of the bills. However, the Landlord had not done that before applying for these proceedings.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of the Landlord that they did not complete the move-out inspection report for this tenancy. Section 35 of the *Act* states the following:

Condition inspection: end of tenancy

35 (1) *The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit*

*(a) on or after the day the tenant ceases to occupy the rental unit,
or*

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

I find that the Landlord breached section 35(3) of the *Act* when they did not complete the written move-out inspection report for this tenancy as required. Where I can understand that the Landlord may have been uncomfortable when the Tenant disputed what the Landlord was writing on the move-out inspection report for this tenancy; however, a landlord has a responsibility to ensure that a full professional condition inspection is completed for move-in and move-out for all tenancy. Section 36(2) of the *Act* outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

36 (2) *The right of a 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 23 (3) [2 opportunities for inspection],*
- (b) having complied with section 23 (3), does not participate on either occasion, or*
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Pursuant to section 36(2) of the *Act*, I find that the Landlord had again extinguished their right to make a claim against the security deposits for damage to the residential property for this tenancy.

Section 38 of the *Act* sets the requirements on how a security deposit is handled at the end of a tenancy, stating the following:

Return of security deposit and pet damage deposit

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.*

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and*
- (b) at the end of the tenancy remains unpaid.*

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

I accept the agreed-upon testimony of these parties, and I find that this tenancy ended on June 30, 2021, and that the Tenant had provided their forwarding address to the Landlord as of June 30, 2021. Accordingly, the Landlord had until July 15, 2021, to comply with sections 38(1) and 38(5) of the *Act* by repaying the security deposit for this tenancy in full to the Tenant, as the Landlord had extinguished their right to claim against either of the deposit for damages caused during this tenancy.

However, in this case, the Landlord did not return the security deposits, as required, but instead made a claim against the security deposit for damages on July 7, 2021, even though they had extinguished their right to make this claim when they did not complete the move-out inspections as required by the *Act*.

Section 38(6) of the *Act* goes on to state that if the landlord does not comply with the requirement to return the deposit within 15 days, the landlord must pay the tenant double the security deposits.

Return of security deposit and pet damage deposit

38 (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.

Therefore, I find that pursuant to section 38(6) of the *Act*, the value of the security deposit for this tenancy has doubled, and is now valued at \$1,000.00, due to the Landlord's breach of section 35(2) of the *Act*.

As for the inspection report in evidence, an arbitrator would normally look to this inspection report as the official document that represents the condition of the rental unit at the beginning and the end of a tenancy, as it is required that this document is completed in the presence of both parties and is seen as a reliable account of the condition of the rental unit. As it has already been determined that the Tenant and Landlord did not agree as to what was written on this document and that the Landlord did not complete this document, I find the inspection report I have before me to be an unreliable account of the condition of this rental unit at the end of tenancy, and I will not consider this document in my determination of this claim.

The Landlord has claimed for the recovery of \$764.13 in losses from this tenancy, consisting of \$285.99 for a new mattress, \$26.99 for a new mattress cover, \$100.00 in labour, \$7.16 and \$10.77 in utilities. Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. The party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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 who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

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

I accept the agreed-upon testimony of these parties that the Tenant did not return the same mattress that had been rented to them at the end of tenancy. Section 37(2) of the *Act* requires that a tenant return the rental unit reasonably clean at the end of the tenancy.

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, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I find that the Tenant breached section 37 of the *Act* when they returned the rental unit without the originally rented mattress at the end of this tenancy. I also find that the Landlord has provided sufficient documentary evidence to show that they suffered a loss of \$285.99 due to the Tenants breach of the *Act*. Therefore, I award the Landlord the return of their claimed mattress costs in the amount of \$285.99.

As for the Landlord's claim for \$100.00 in labour to dispose of the mattress, I find the request rate of \$50.00 per hour for labour to be unreasonable and unsubstantiated in this claim. Therefore, I find it reasonable to reduce the hourly labour to \$25.00 per hour, and I grant the Landlord their requested one hour of labour for two people in the amount of \$50.00.

As for the new mattress cover, during these proceedings, the parties offered conflicting verbal testimony regarding the inclusion of a mattress cover in this tenancy. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the Landlord is making this claim and therefore holds the burden to prove that a mattress cover had been rented to the Tenant as part of this tenancy agreement.

I have reviewed all of the documentary evidence before me and can find no evidence that a mattress cover had been rented to this Tenant as part of this tenancy. Consequently, I dismiss this portion of the Landlord's claim in its entirety.

The Landlord has also claimed for \$333.22 in the recovery of their costs to replace a damaged microwave at the end of the tenancy. I accept the agreed-upon testimony of these parties that the microwave was damaged during this tenancy. Section 32(3) of the *Act* states that a tenant must repair any damage to the rental property that they caused by their actions or neglect during their tenancy.

Landlord and tenant obligations to repair and maintain

32 (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.

Again, the parties offered conflicting verbal testimony during these proceedings regarding the cause of the microwave damage. As stated above, in cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As it is the Landlord making this claim, they hold the burden of proof.

I have reviewed all of the documentary evidence before, and I find that there is insufficient evidence before me to show that the Tenant, either through action or neglect, had caused the damage to the microwave. Consequently, I dismiss this portion of the Landlord's claim in its entirety.

Additionally, I accept the Landlord's testimony that they did not attempt to have the microwave repaired. Section 7 of the *Act* states the following:

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.

I find that the Landlord did not act reasonably to minimize their possible damages or losses for the microwave when they did not take steps to determine what caused the

damage to the microwave, misuse or malfunction, or attempt to have the microwave repaired. Therefore, I find that the Landlord breached section 7(2) of the *Act*.

For the reasons stated above, I dismiss the Landlord's claim for the replacement costs of the microwave in its entirety.

On the final two points of the Landlord's claim, I accept the agreed-upon testimony of these parties and find that even though no demand letter for the gas and hydro bills has been sent to the Tenant, that the Landlord is entitled to \$7.16 in gas utility bill and \$10.77 in BC hydro utility bill for this tenancy. I grant the Landlord \$17.93 in the payment of the gas and BC hydro bills for this tenancy.

Finally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been partially successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Overall, I grant permission to the Landlord to retain \$453.92 of the security deposit for this tenancy, consisting of \$285.99 for a new mattress, \$50.00 in labour, \$17.93 in utilities and \$100.00 in the recovery of their filing fee for these proceedings.

I order the Landlord to return the remaining doubled value of the security deposit that they are holding for this tenancy to the Tenant within 15 days of receiving this decision, in the amount of \$456.08.

Additionally, I grant the Tenant a conditional monetary order in the amount of \$456.08 to be served on the Landlord in the event that they do not comply as ordered.

Conclusion

I find that the Landlord breached sections 7 and 38 of the *Act* during this tenancy.

I grant the Landlord permission to retain \$453.92 of the security deposit for this tenancy.

I order the Landlord to return the remaining doubled value of the security deposit in the amount of \$456.08 to the Tenant within 15 days of the date of this decision.

I grant the Tenant a conditional **Monetary Order** in the amount of **\$456.08** for the return of their security deposit. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible, should the Landlord not comply as ordered. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 3, 2022

Residential Tenancy Branch