Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for the landlord to return the security deposit pursuant to section 38;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

The tenants ST and LR attended for the tenants. The tenant ST primarily provided testimony which was confirmed by the tenant LR in affirmed testimony. The tenants are referenced in the Decision in the singular as "the tenant" and are individually identified for clarity as necessary.

The landlord attended.

Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained.

Each party confirmed they were not recording the hearing.

Each party provided the email addresses to which the Decision shall be sent.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order for the landlord to return the security deposit pursuant to section 38;

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;

Background and Evidence

This is an application by the tenant for the return of one month's rent and the security deposit retained by the landlord of $500.00. The landlord requested the application be dismissed.

The parties submitted considerable conflicting testimony in a 2-hour hearing including copies of many texts and documents. Not all this evidence is repeated in my Decision. I reference only key relevant and admissible facts and findings.

The parties agreed on the background of the tenancy as follows and submitted a copy of the tenancy agreement.

1. They signed a tenancy agreement on August 1, 2021, for the rental of the furnished unit, a 3-bedroom basement suite for a fixed term of ten months.
2. Rent was $2,450.00 monthly payable on the first and the tenant paid the first month's rent.
3. The tenant provided a security deposit of $1,225.00.
4. The tenant did not move in.
5. No condition inspection report was completed on moving in.
6. On August 12, 2021, the tenant complained by text about the tenancy and the landlord responded by text saying if they were unhappy, they could move out
7. The tenant responded on August 13, 2021 by text, saying they would move out.
8. On August 21, 2021, the parties conducted a condition inspection on moving out and submitted a signed report as evidence.
9. In the condition inspection report on moving out, the tenant agreed the landlord could retain $500.00 of the security deposit.
10. The landlord promptly returned the balance of $775.00.

The tenant claimed the landlord breached material terms of the tenancy by not providing a unit that was suitable for residency. Also, the landlord breached a key verbal promise that the tenant could repair the flooring.

Considerable time during the hearing was spent by the tenant in creating a timeline for the events. The tenant provided their best recollection and copies of supporting referenced texts. The tenant testified as follows:

1. The tenant is a group of three students who were renting for the first time.
2. The tenant and the landlord did a “brief walk through” of the vacant unit on July 23, 2021.
3. The tenant observed the unit was dark and the flooring was old, damaged and “moldy”.
4. The parties verbally agreed the tenant could do the following:
    a. paint the unit at their own expense.
    b. cover the existing flooring with new flooring (the “flooring repair”). The landlord agreed to provide the materials.
5. The tenant submitted pictures of the flooring in support of their observation that the flooring was scuffed, broken in places, and stained.
6. The tenant testified that the compliance with the painting and flooring repair were key to their agreeing to the tenancy and they would not have entered into the agreement without being able to improve the conditions in the unit.
7. No condition inspect report was completed at moving in.
8. The tenant brought paint and supplies to the unit on August 1, 2021, and covered furnishings to prepare for painting.
9. On August 5, 2021, the tenant returned, began painting and discovered the following. The unit was dirty and uninhabitable. There was garbage under the sink. There were “bugs”, such as spiders and eggs throughout the unit. There were silverfish in the bed.
10. That day, the tenant sent a text to the landlord complaining about the condition of the unit. The text stated in part:

    W*e had brought all of our supplies to clean, and were more than willing to tidy up the suite, however upon close inspection we noticed that many of the corners, cabinets and furniture had been left in very poor condition. The mattresses and sheets had bugs in them, and the kitchen cabinets had garbage left over, the drawers are stained and filled with dirt/debris. The microwave is broken, the*

overn has a lot of buildup and is in need of a thorough clean. We are very reasonable tenants, and we believe that it is the landlords job to make sure the suite has been cleaned. We won't be moving anything into the flat until the place has been professionally cleaned. We can also do another walk through and point out the things that need to be taken care of if you think it would be necessary.

11. The tenant removed the furnishings with silverfish from the unit.
12. They found the unit was uninhabitable at the start of the tenancy, but the condition was not apparent to the tenant from the brief walk-through.
13. The landlord hired a cleaner who cleaned the unit at the landlord's expense on August 10, 2021. The tenant was still dissatisfied with the state of cleanliness. No pest remediation was undertaken.
14. The landlord was displeased with the quality of the tenant's painting and complained on August 10, 2021 by text with photos. The tenant touched up the painting and sent the landlord confirming pictures on August 12, 2021 by text.
15. The tenant stated that communication with the landlord became difficult, and stated in the written submissions as follows:

    We complied with what he asked to maintain a good relationship and proceeded to email him before and after photos of what he wanted to be cleaned. He failed to respond to our email regarding our end of tenancy and our clean up of the issues he brought up, yet he continued to text us instead of reading the email.

16. On August 12, 2021, the tenant attended with assistance of a family member to do the flooring repair. The tenant and her father who was assisting were experienced in this kind of work.
17. Shortly before they were to start work, the landlord informed the tenant by text that they did not have his permission to do flooring repair as he was dissatisfied with the painting job they did. The tenant asked the landlord by text to instal the flooring and the landlord refused. The flooring repair was not done.
18. In the tenant's written submissions, they state in part:

    Flooring never fixed: *Throughout these last few weeks, the tenants sent the landlord links to flooring installation and material, and he said that he could consider peel and stick flooring if the tenant was to install it themselves, as the cost of hiring someone would be extensive. Upon the agreed date of flooring installation, the landlord texted and asked that we put it on hold as he was*

concerned about the level of professionalism we would be able to meet, despite not wanting to hire a professional to install it themselves.

After days of distressing back and forth conversations regarding the flooring, the tenants decided to give up.

At this point the tenants felt uncomfortable about the living conditions and the landlord was being difficult to resolve these issues. The landlord suggested that because they had not moved anything in yet, it would be alright to decide to not move forward with the move-in.

19. On August 12, 2021, the tenant complained by text about the tenancy and the landlord responded by text saying if they were unhappy, they could move out.
20. The tenant responded on August 13, 2021 by text, saying they would move out.
21. The tenant explained their decision not to move in in their written submissions:

    Due to the timeline of moving in lining up at the beginning of the academic year as university students, we were compromising our own needs and safety concerns, until the conversations with the landlord became so anxiety provoking that we could not move forward with the move in.

22. The tenant described two efforts to meet with the landlord which involved them travelling to the unit; they claimed the landlord cancelled at the last minute, was difficult to contact, and appeared reluctant to return the money. Supporting texts were submitted.
23. The tenant met with the landlord on August 21, 2021, and the moving-out portion of the condition inspection report was completed; the tenant agreed to the deduction of $500.00 of the security deposit for damages.
24. The tenant brought a friend experienced in tenancy matters who was not allowed to participate in the final inspection; the friend DT provided a written statement to this effect, stating he was locked out.
25. The tenant provided their forwarding address on August 21, 2021.
26. The tenant believed there were placed in a position of duress when they agreed to the deduction of the security deposit. The landlord as the more experienced party pressured the tenant into agreeing to pay him $500.00 although he had no expenses with respect to the alleged paint deficiencies. The landlord coerced the tenant by interrupting them, refusing to listen to their point of view and bullied

them into accepting the deduction. He refused to allow their friend to attend the final meeting.

27. The landlord submitted no evidence of any deficiencies or related expenses warranting a deduction of $500.00; the amount was unreasonable and unfair.
28. The tenant would not have signed agreeing to the deduction if the landlord had not coerced them. The landlord was not entitled to retain $500.00 and should return the amount to the tenant.
29. The landlord refunded the balance of the security deposit of $775.00 in a timely manner.

In summary, the tenant claimed the landlord breached material terms of the tenancy and coerced them to give him $500.00 of the security deposit. The tenant requested the return of the rent for August 2021 and the $500.00 of the security deposit.

The landlord vehemently disagreed with many aspects of the tenant's testimony. The landlord submitted written submissions. The landlord testified as follows:

1. The building in which the unit is located is owned by his father who lives upstairs. They have rented out the unit for many years without any trouble.
2. The tenant informed him they had rented previously.
3. The tenant and the landlord did a walk through of the vacant unit on July 23, 2021, and the tenant could see the condition of the unit; the tenant did not complain. The unit was habitable and clean enough.
4. No condition inspection report was completed at moving in although the landlord attempted unsuccessfully to arrange it with the tenant.
5. The landlord verbally agreed the tenant could paint the unit at their own expense. This was not a term of the tenancy agreement.
6. The flooring of the unit was serviceable although older. There was no mold. Any change to the flooring the landlord agreed to was for cosmetic purposes only and was not a term of the agreement. The landlord agreed the tenant do the flooring repair based on their assurance they knew how to do the work. This verbal permission was extended as a courtesy only and was not a term of the agreement.
7. The tenant brought paint and supplies to the unit on August 1, 2021, and covered furnishings. The tenant had adequate opportunity once again to inspect the unit and did not complain.

8. The landlord agreed the tenant complained by text on August 5, 2021, because of which he hired a cleaner at his own expense who thoroughly cleaned the unit on August 10, 2021. All the tenant's complaints about the unit were resolved.
9. The landlord did not observe insects in the unit and denied there was any, including the silverfish.
10. The landlord did not carry out any insect remediation or pest control and saw no reason to do so.
11. The landlord was dissatisfied with the quality of the tenant's painting and complained. The landlord outlined many issues with their painting including the painting of varnished doors with latex paint.
12. The tenant touched up some of the issues but did not completely repair the poor aspects of the work. The job was poorly done, devalued the unit, and entitled the landlord to compensation.
13. The landlord agreed that on August 12, 2021, the tenant attended with assistance of a family member to install the flooring which was on site.
14. The landlord acknowledged he denied permission to instal the flooring shortly before work was to commence because of the shoddy painting job and his belief the tenant was incapable of doing the work.
15. The flooring was not installed as the existing flooring was serviceable and did not need to be replaced.
16. The landlord agreed that the tenant complained again, on August 12, 2021 and the landlord responded on August 13, 2021 saying if they were unhappy, they could move out.
17. The landlord was available and cooperative with the tenant in arranging meetings and communicating.
18. The parties met on August 21, 2021, and the moving-out portion of the condition inspection report was completed; the tenant agreed to the deduction of $500.00 of the security deposit for damages. The damages related to the devaluing of the unit from the poor painting job. The landlord did not incur any repair expenses. The tenant provided their forwarding address.
19. The landlord did not pressure the tenant into signing the condition inspection report or to accepting the deduction of the security deposit. He was within his rights to be compensated for the damage and explained to the tenant they were required to do so. The reason the friend of the tenant was excluded from the meeting was because of pandemic concerns.
20. The landlord refunded the balance of the security deposit of $775.00.
21. The landlord did not submit any photographs of the condition of the unit either at moving in or moving out.

In summary, the landlord stated that the tenant had adequate opportunity to inspect the unit prior to signing the tenancy agreement. The landlord corrected the cleaning issues about which the tenant complained. There was no need for pest eradication as there were no pests in the unit. The flooring repair was not a term of the contract and the verbal promise was not a material term. The landlord is entitled to rent for the month of August 2021 as the tenant had right to occupation of the unit. The tenant is not entitled to the return of the security deposit or the rent.

The tenant requested a refund of the $500.00 deducted from the security deposit and reimbursement of $2,450.00 paid for rent for August 2021.

The landlord requested their claim be dismissed without leave to reapply.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the parties' submissions and arguments are reproduced here in a hearing which lasted two hours. The relevant and important aspects of the claims and my findings are set out below.

Determination of Damage and Compensation

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

Section 26 of the *Act* authorises the Director to make an order that the tenant deduct rent, stating as follows:

> ***26*** *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent*.

Section 62(3) of the *Act* states:

> *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

Credibility

I acknowledge that the landlord disagreed with the tenant's version of events in key aspects. I recognize his statements that he is an experienced landlord and has rented the unit many times. The landlord testified that in his opinion the unit was in adequate condition at the start of the tenancy, and he complied in all respects with the duties of a landlord.

In short, I acknowledge the landlord argued that the unit was suitable for occupation and the painting and floor repairs were unnecessary and cosmetic, and the promises were gratuitous, not forming part of the agreement. He also asserted that his efforts to remediate the complaints were sufficient and it was reasonable that he would deny permission to do the flooring repair. The landlord stated that the tenant had no reasonable cause to complain or to expect the rent and security deposit to be refunded.

I do not find the landlord's submissions to be persuasive. I find the landlord's suggestion that the tenant is untruthful or exaggerating to be unsupported by the evidence.

I find the tenants ST and LR, who provided testimony at the hearing along with supporting photographs and communication, were believable, calm, and forthright. All key aspects of their testimony were supported by evidence. The parties' correspondence clearly sets out the problems they experienced with the condition of the unit and their frustration at the landlord's failure to remedy the situation as well as his refusal to allow them to do the flooring repair as promised.

As a result of my observations and findings, where the versions of events differ between the parties, I give more weight to the tenant's testimony.

Landlord Responsibility for Condition of Premises

The landlord has an obligation to provide a residential property that meets certain standards. Section 32(1) and (5) of the Act state:

> ***Landlord and tenant obligations to repair and maintain***
>
> *32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that*
>
> *(a) complies with the health, safety and housing standards required by law, and*
>
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*
>
> *(5) A landlord's obligations under subsection (1) (a) apply whether a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

Policy Guideline 1 Landlord & Tenant – Responsibility for Residential Premises provides guidance for the landlord's obligations. The Guideline states in part:

> *The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are* ***reasonably suitable for occupation*** *given the nature and location of the property*

…

PROPERTY MAINTENANCE

…

5. *The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control*.

[emphasis added]

I accept the tenant's evidence as follows. Before they moved in, it was essential to them that the unit be reasonably clean, and the discussed painting and flooring repair would take place. Without these expectations being met, they would not have entered into the tenancy agreement. .These conditions were not met as the tenant reasonably expected. The tenant believed the continuation of the tenancy was untenable. Accordingly, when the landlord offered on August 12, 2021 to end the tenancy, the tenant acted prudently and reasonably in accepting the offer on August 13, 2021. I find the tenancy ended by mutual agreement on August 13, 2021.

I found the tenant credible in describing the presence of dirt, garbage and insects at the beginning of the tenancy. While the landlord denied the tenant's description of the unit, the landlord nevertheless paid a cleaner to clean the unit on August 10, 2021. By doing so, I find that the landlord accepted that the unit needed cleaning at the beginning of the tenancy. I find the landlord failed in his obligation to provide the unit in a condition that was reasonably suitable for occupation. I also find he failed in his obligation to provide a condition inspection report on moving in.

In summary, I find the landlord failed in the landlord's obligation under section 32 to provide a unit *reasonably suitable for occupation.*

Condition Inspection Report

Completing move-in and move-out condition inspection reports is a requirement under the Act pursuant to sections 23(3) and 35.

The Act places the obligation on the landlord to complete the report in accordance with the regulations. Section 19 of the *Residential Tenancy Regulation* ("*Regulation*")

requires that condition inspection report must be conducted on moving in and must be in writing. Section 20 of the *Regulation* requires detailed, specific information to be included in the condition inspection reports. Other sections of the Act address the obligations of the landlord to schedule an inspection and provide notice.

At the end of the tenancy a landlord and tenant must inspect the rental unit together and complete a Condition Inspection Report on moving out. All damages and concerns should be noted in the report. Comparing the move-in and move-out Condition Inspection Reports allows the landlord and tenant to see if the rental unit was damaged and who is responsible for paying for repairs.

The RTB provides a form for this purpose. This is an official record of any damage in the unit before the tenant moved in – it can be submitted as evidence if there's ever a dispute about the rental unit's condition.

The landlord's right to claim against a security deposit, pet damage deposit, or both, for damage to residential property no longer exists if the landlord does not provide two opportunities for inspection; or does not participate on either occasion; or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Both parties agreed that no written condition inspection report was completed for this tenancy at the beginning, and one was not provided for this hearing.

This official record is an important piece of evidence which can assist arbitrators in resolving disputes.

I find the landlord did not comply with the provisions of the Act.

However, I also find the tenant voluntarily agreed to the deduction of $500.00 from the security deposit and the tenant's claim for the refund is unfounded. This issue is addressed below.

Security deposit

The tenant claimed return of the security deposit of $500.00 retained by the landlord.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing.

If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the deposit.

However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The tenant claimed the agreement to retain $500.00 of the security deposit was entered into based on circumstances amounting to duress. The tenant testified they felt pressured and manipulated by a more experienced party into accepting an unfair deduction. They suggested it is unfair that the landlord would take advantage of their inexperience.

If the tenant could establish duress, a contractual basis for rescission would be established. That is, establishing duress would release the tenant from the August 21, 2021 agreement to allow the landlord to keep $500.00 of the security deposit.

I have considered the correspondence between the parties and the considerable testimony at the hearing. I do not accept this argument. Both parties had opportunity to obtain accurate information on their rights and obligations.

While I accept the landlord was the more experienced party in tenancy agreements and employed a variety of persuasive methods, I find the circumstances do not amount to duress or manipulation on the part of the landlord. I find the agreement to allow the landlord to retain part of the security deposit to be an effective legally binding agreement.

The tenant was free not to sign and to seek further advice. The tenant had a choice about whether to sign or not.

On a balance of probabilities and for the reasons stated below, I make the following findings based on the testimony and evidence of both parties. The tenancy ended on August 13, 2021. On August 21, 2021, the tenant gave the landlord written permission to retain the amount of $500.00 from their security deposit. The landlord returned the balance of the security deposit to the tenant in a timely manner.

While the tenant regrets the settlement, I find they freely entered into the agreement that the landlord could retain $500.00..

I find the tenant has not met the standard of proof on a balance of probabilities that they experienced duress, pressure, force, threats or coercion, because of which they signed the agreement.

As a result, I dismiss the tenant's application for a return of the $500.00 security deposit retained by the landlord without leave to reapply.

Ending a Tenancy – section 44(1)(c) – Agreement in Writing

Section 44 of the Act sets out the ways a tenancy ends. Section 44(1) of the Act lists fourteen categories under which a tenancy may be ended, and references section 45 of the Act.

Section 44(1)(c) states that a tenancy ends when the landlord and tenant agree in writing to end the tenancy. The section states in part:

> ***How a tenancy ends***
> *44 (1) A tenancy ends only if one or more of the following applies:*
> *a) …*
> *b) …*
> *c) the landlord and tenant agree in writing to end the tenancy;*

Ending a Tenancy – section 45(3) - Breach of a Material Term

Section 45(3) of the Act deals with breach of a material term:

> *(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after*

> *the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*
>
> *(4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

As noted in RTB Policy Guideline #8 – Unconscionable and Material Terms, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement.

> *To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the tenant, to present evidence and argument supporting the proposition that the term was a material term.*
>
> *The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will look at the true intention of the parties in determining whether the clause is material.*

RTB Policy Guideline #8 reads in part as follows:

> *To end a tenancy agreement for breach of a material term the party alleging a breach…must inform the other party in writing:*
>
> *· that there is a problem;*
> *· that they believe the problem is a breach of a material term of the tenancy agreement;*
> *· that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
> *· that if the problem is not fixed by the deadline, the party will end the tenancy…*

I find the landlord failed to comply with his obligations under the Act to carry out a condition inspection which would have revealed the actual condition of the unit. I find

the tenant notified the landlord of the condition of the unit and the landlord remediated by hearing a cleaner. I find difficulties continued between the parties when the landlord refused to allow the tenant to do the flooring repair. I find the tenant reached their breaking point and the landlord's refusal was the last in a line of unacceptable occurrences. When informed of this, I find the landlord offered the tenant a chance to move out which was accepted on August 13, 2021, an exchange which occurred in writing through texts.

I find the tenancy ended by mutual agreement under section 44(1)(c) of the Act on August 13, 2021, and the tenant is entitled to return of the rent paid from August 14, 2021 to the end of August 2021 which I find is $1,343.55.

I grant the tenant a Monetary Order in the amount of $1,343.55.

Conclusion

I grant a Monetary Order to the tenant in the amount of $1,343.55**.** This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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: March11, 2022

Residential Tenancy Branch