



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MND, MNSD, MNDC and FF
Tenants: MNSD and FF

Introduction

This hearing addressed applications by both the landlord and the tenant.

The landlords' application of December 21, 2012 sought a monetary award for the costs of cleaning and repair of the rental unit, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off against the balance owed.

The tenant's application of February 18, 2013 sought an order for return of her security deposit in double and recovery of her filing fee.

Issue(s) to be Decided

The landlord's application requires a decision on whether she is entitled to a monetary award for the costs of cleaning and damage to the rental unit, and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether she is entitled to return of the security deposit, whether the amount should be doubled.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Claims for damage or loss under section 7 of the *Act* require that the claimant do whatever is reasonable to minimize the claimed loss.

Background, Evidence and Analysis

This tenancy began on May 1, 2011 and ended on or about October 31, 2012. Rent was \$1,350 per month and the landlord holds a security deposit of \$675 paid on May 1, 2011.

There were no move in or move out condition inspection reports as required under section 23 and 35 of the *Act* and while the landlord offered to meet the tenant on November 15, 2012 for the move-out, she had not submitted a final notice on the approved form as required under Part 3 of the *Regulations*.

The parties further concur that while the tenancy was to end on October 31, 2012, the tenant did not empty the rental unit or turn over the keys until November 15, 2012, by which time the parties agree the landlord had received the tenant's forwarding address.

Landlords' Claims

As a matter of note, I dismissed claims made by the landlord for fuel used to travel to the rental unit as a cost of doing business and a \$50 filing fee from a previous hearing as there is no provision in the *Act* to award for either.

It is noteworthy that while there is one named tenant in the rental agreement, the tenant's adult daughter lived with her and they both had frequent guests. In addition, the tenant had a 24-pound cat.

General cleaning – \$519.28. The landlord has factored in to this claim three days missed work for cleaning. The claim is for 35 hours work which included interior and yard cleaning. On the basis of photographic evidence, I find that – despite the tenant having also contributed several hours to the job – the landlord was left with a substantial amount to do. This claim is allowed in full.

Supplies for cleaning, repairs and paint - \$353.63. This claim is supported by receipts and the photographic evidence and the claim is allowed in full.

Replacement door lock - \$50.40. The landlord stated that the tenant had returned most of the keys on November 15, 2012 but not the key for the deadbolt. This claim is allowed in full.

Hardwood floor sanding - \$1,134.00. This claim is based on an estimate although the work has not yet been done due to early occupancy by new tenants. The landlord bases this claim on the fact that – while smoking was not permitted under the rental agreement – there were a number of cigarette burns and other gouges on the floor. Given the age of the floor, I find that I must factor in some normal wear and tear and depreciation. However, on the basis of before and after photographs, I do find that the tenant's abuse hastened the need for refinishing and I allow \$800 on this claim.

Replacement of 8' x 12' area rug - \$800. The parties concurred that the tenant, having found the carpet in question badly soiled, disposed of it. The landlord stated that the rug in question was higher quality and basis this claim on replacement cost. However, she stated that it was six years old, and I find that it should be depreciated proportionate to the 10-year useful life assigned to such items by standard depreciation tables. Therefore, I allow 40 percent of this claim which is \$320.

Repair cigarette burn to vinyl floor - \$150. The landlord stated that this estimate takes into account that a flooring specialist could not match the patten and will have to move the fridge out to cut a patch for insertion into the damaged area. This claim is allowed in full.

Garburator repair - \$60. While the tenant stated that she had never used this device, she did acknowledge having had many guests in the home during the tenancy. The landlord stated that it had work well at the beginning of the tenancy and that, after pop can tabs, plastic bags and tabs, etc. had been removed by a service person, it was restored to service. I find that this claim is allowed in full.

Labour and dump fees - \$150. The landlord makes this claim for causal labour hired to help clean up the yard, including dumped cat litter and general debris, which the landlord stated filled 15 garbage bags. On the basis of photographic evidence, I find the claim should be allowed in full. .

Repairs to front door - \$458. The landlord had originally made claim for \$200 to repair the door, deeply and broadly gouged by the tenant's cat. However, having been advised by a service person that the door was beyond repair, the landlord seeks replacement cost and notes that as it is a double-door entry, she will have to pay for the second matching door herself. The claim is allowed.

Sundeck resurfacing materials - \$1,000. The landlord said that the resurfacing was necessitated by the tenant's failure to clean the deck allowing accumulated organic materials hastened its deterioration as did the tenants attempts to restore it. Given that the deck surfacing was 10 years old according to the landlord, and in view of the tenancy having lasted only 1.5 years, I reduce the award on this claim to \$100.

Replace kitchen countertop - \$108. This claim is only for the panel damaged by a cigarette burn, and the landlord will assume the balance of the \$800 cost to replace the whole top to ensure the sections match. The claim is allowed in full.

Filing fee - \$50. As the landlord's application has succeeded on its merits, I find that she is entitled to recover the filing fee for this proceeding from the tenant.

Security deposit – (\$675). As the landlord's application was made over a month after the end of the tenancy and receipt of the tenant's forwarding address, and as there were no condition inspection reports, the landlord's right to claim against the deposit is extinguished.

Tenant's Claim

Security deposit - \$1,350. The tenant arrived at this figure by asking for double the \$675 deposit to \$1,350. Section 38(1) of the *Act* mandates that, absent the tenant's consent, the landlord must either return the deposit to the tenant or make application to claim against it within the latter of 15 days from the end of the tenancy or receipt of the tenant's forwarding address.

Section 38(6) of the *Act* states that, if a landlord does not comply with section 38(1), the landlord must return the security deposit in double. I find that the tenant is entitled to return of the deposit in double and the claim is allowed in full.

Filing fee - \$50. I find that this dispute was initiated by the tenant's failure to clean and repair the rental unit and to give timely vacant possession. I decline to award her filing fee.

Thus, I find that accounts balance as follows:

Award to landlord		
General cleaning	\$519.28	
Supplies for cleaning, repairs and paint	353.63	
Replacement door lock	50.40	
Hardwood floor sanding	800.00	
Replacement of 8' x 12' area rug	320.00	
Repair cigarette burn to vinyl floor	150.00	
Garburator repair	60.00	
Labour and dump fees	150.00	
Repairs to front door	458.00	
Sundeck resurfacing materials	100.00	
Replace kitchen countertop	108.00	
Filing fee	<u>50.00</u>	
Sub total	\$3,119.31	\$3,119.31
Award to tenant for credit		
Security deposit	\$ 675.00	
To double security deposit	<u>675.00</u>	
Sub total	\$1,350.00	- <u>1,350.00</u>
Balance owed by tenant to landlord		\$1,769.31

Conclusion

The landlord's copy of this decision is accompanied by a Monetary Order for **\$1,769.31**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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: March 13, 2013

Residential Tenancy Branch

