



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlord. The hearing was conducted by conference call. The landlord and the tenant participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security and pet deposits, including double the amount?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Nanaimo. The tenancy began in July, 2007. The monthly rent was \$1,000.00 and the tenant paid a \$500.00 security deposit and a \$500.00 pet deposit at the commencement of the tenancy. The tenant gave notice that she would move out of the rental unit at the end of December, 2012. The tenant paid rent for December, but she moved out of the rental unit on December 15, 2012. The tenant took part in a move-out inspection with the landlord on December 31, 2012. The tenant said that the landlord inspected the unit and thanked her for leaving it in such good condition. The tenant said that no written condition inspection report was filled out when she moved out and there was no condition inspection when the tenancy started in 2007. The tenant testified that she provided the landlord with her forwarding address at the move-out inspection. When she had not received the return of her deposit by January 17, 2013, the tenant met with the landlord and requested payment of the deposit. The landlord at first denied that the tenant had provided a deposit and later complained about the condition of the rental unit and said she intended to keep some of the deposit. The landlord later accepted that the tenant had paid a \$1,000.00 deposit at the commencement of the tenancy.

The tenant submitted her application to claim the deposit, including double the amount of the deposit on January 23, 2013. According to the landlord she mailed a cheque to the tenant on January 31, 2013. The cheque was in the amount of \$1,000.00, being the full deposit amount. The tenant received the cheque, but has not cashed it.

The landlord claimed a monetary award in the amount of \$4,265.89. The landlord alleged that the tenant withheld information needed to allow the landlord to confirm payment of a security deposit until after the time for returning it had passed. The landlord said that although the tenant left the rental property superficially clean there was significant damage that was only apparent after a more careful examination by the landlord.

The landlord claimed a monetary order in the amount of \$4,265.89. She claimed that the tenant caused the following damage to the rental unit:

- Damaged kitchen tiles
- Broken beveled glass door
- Missing blinds
- Kitchen drawers broken
- Entry painted without permission
- Entry tiles broken
- Damage from TV wall mount
- Missing closet door
- Damaged hardwood floors in bedrooms
- Carpets removed from stairs without permission
- Loft carpet removed without permission
- Living room floor stained from plant moisture
- Broken light fixture
- Outside vinyl siding damaged
- Damaged gutter
- Front and back doors chewed by pets
- Bathroom tile water damaged
- Solar lights missing
- Windows damaged by mold; painting required

The landlord also complained that smoking was not permitted, but the tenant smoked in the rental unit and the new occupants were affected by the lingering smoke odour in some areas of the rental unit. The landlord claimed that she suffered a loss of one month's rent because of the smell of smoke in the rental property.

The tenant disputed substantially all of the landlord's claims. The tenant did acknowledge breaking the bevelled glass pane in the door. There was no written

condition inspection when the tenant moved into the rental unit. There was an informal walk through when the tenant moved out, but a written report was not prepared. The tenant said that the landlord expressed her appreciation for the overall condition of the rental property when she moved out. She said that there was pre-existing damage before the tenancy began, such as cracked tiles in the entrance that were covered by a rug, broken kitchen drawers and a missing closet door and these were not problems caused by the tenant.

The tenant said that there was no prohibition against smoking and smoking was confined to a small area of the rental unit. The tenant denied that there was any lingering smoke odour in the rental unit. The tenant said she had to supply some of her own window coverings and took them with her when she moved. She said that all of the matters complained of by the landlord were either pre-existing damage or normal wear and tear, or like some of the carpet that was removed, matters that were discussed with the landlord and approved during the tenancy.

Analysis and conclusion

The tenancy continued for more than five years. There was no condition inspection performed when the tenancy began and only a cursory walk through was done when the tenancy ended. The tenant disputed almost all of the landlord's claims as to damage to the rental unit and after a tenancy of this duration there is the expectation of normal wear and tear that will require repainting of all or part of the rental unit.

The landlord bears the burden of proving on a balance of probabilities that there is damage for which the tenant is responsible. For the majority of the claims advanced by the landlord, I find that she has not proven her claims. The tenant acknowledged responsibility for a damaged glass door. I find that the tenant is responsible for the repair cost for the glass door and I also accept the landlord's testimony that a light fixture was broken during the tenancy for which the tenant was responsible. Based on the landlord's testimony and the photographic evidence, I find that the landlord was put to some additional work and painting costs to repair and paint damage caused when the tenant mounted a television to the wall. I award the landlord the sum of \$135.12 for the repair to the glass door. Based on the landlord's quote, I award her the sum of \$120.67 for a replacement light fixture. I award the landlord the sum of \$100.00 for the wall repair and painting.

All other claims by the landlord I find to be unproven and they are dismissed without leave to reapply. The total award to the landlord is the sum of \$355.79. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$405.79.

The tenant has claimed payment of her deposits, including double the amount. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

I am satisfied that the tenant provided the landlord with her forwarding address in writing on December 31, 2012, and based upon the acknowledgement of the landlord at the hearing I find that the tenant served the landlord with documents notifying the landlord of this application as required by the *Act*. The landlord mailed a cheque to the tenant on January 31, 2013, which was outside of the 15 day period.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenant's application and award her the sum of \$2,000.00. The tenant is entitled to recover the \$50.00 filing fee for her application for a total award of \$2,050.00. Pursuant to section 72 of the *Residential Tenancy Act* I set off the award to the landlord against the tenant's award, leaving a net amount due to the tenant of \$1,644.21 and I grant the tenant a monetary order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that court. If the tenant is able to negotiate the landlord's cheque in the amount of \$1,000.00, she must credit that amount against the monetary order in her favour.

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: May 23, 2013

Residential Tenancy Branch

