



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on February 05, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; and to recover the cost of the filing fee from the Tenants for this application.

In the Details of Dispute the Landlord wrote as follows:

Want to keep damage deposit for damage repairs cleaning and unpaid electrical bill see list

[Reproduced as written]

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant and the Tenant's Agent. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence. That being said, the Landlord stated that she had left the Tenant's evidence at her office so she did not have it in front of her during the hearing.

Each person is required to attend the scheduled hearing prepared to present their evidence and their response to the other party's evidence. Therefore, despite the Landlord forgetting to gather the Tenant's evidence to have with her during the hearing, I will consider all documentary evidence that was submitted by each party as that evidence was submitted and served upon the other in accordance with the Act.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a

summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to offset reimbursement for the municipal utilities against the portion of the security deposit she retained?
2. Has the Landlord proven entitlement to monetary compensation for damages to the unit, site or property?

Background and Evidence

The undisputed evidence was the Tenant began to occupy the rental unit as of March 6, 2012 based on a six month fixed term tenancy agreement. The parties entered into numerous subsequent fixed term tenancy agreements with the last written tenancy agreement starting on July 1, 2014 which switched to a month to month tenancy after December 31, 2014.

The Tenant was required to pay rent of \$1,500.00 on or before the first of each month and on or around March 6, 2012 the Tenant paid \$750.00 as the security deposit.

No condition inspection report forms were completed at move in or at move out.

The Landlord submitted that the Tenant provided her with proper notice to end his tenancy and he vacated the rental unit as of February 28, 2015. The Landlord asserted that the Tenant left the rental unit requiring extensive cleaning and with some damage. As a result she was seeking compensation as follows: \$360.00 for cleaning and patching the walls; \$124.95 for carpet cleaning; \$68.25 for cleaning the blinds; \$35.95 for cleaning supplies; and \$21.26 for rollers and hardware for the closet doors.

The Landlord argued that the rental unit was brand new when her daughter rented the suite for a year and a half and she was the only person who occupied the unit prior to the Tenant. She was insistent that the rental unit was in "pristine" condition when the Tenant took possession. The Landlord later stated that the unit was built approximately 7 years ago and was approximately three or four years old when she purchased it. She later confirmed the unit was not brand new when they purchased it and it was in like new condition.

The Landlord submitted photographic evidence which included pictures of: dirty water from the carpet cleaner; a scratch which she submitted was in both bathtubs; screw holes in the walls; screws which were removed from the walls; tape on the fridge door; and a before and after picture of under the kitchen cabinet garbage container.

In addition to the above, the Landlord was also seeking compensation for the unpaid municipal utility bill in the amount of \$53.81, as per the paid invoice submitted in her evidence. The invoice indicates a billing date of December 08, 2014 and that payment was due December 29, 2014. The Landlord paid the invoice on February 05, 2015.

The Tenant disputed the Landlord's submission and stated that he vacated the rental unit sometime between January 26, 2015 and January 31, 2015 and not February 28, 2015 as submitted by the Landlord. He stated that he vacated after giving proper notice that he gave sometime shortly after Christmas. The Tenant served the Landlord his forwarding address in writing on February 10, 2015.

The Tenant argued that the Landlord had picked the date and time for the move out inspection. When he arrived at the scheduled time the Landlord told him it was too dark to complete the inspection. He said he offered to return another day and time to complete the inspection but the Landlord refused.

The Tenant accepted responsibility for the carpet cleaning costs. He disputed all other items which were claimed by the Landlord. The Tenant and his Agent argued that they had spent several hours cleaning the rental unit. They wiped all the blinds; cleaned all of the appliances and the bathrooms.

The Tenant admitted to using screws to hang his pictures on the walls and thought he had removed all of them at the end of his tenancy. He argued that the garbage can was attached or screwed into the retractable frame so he did not unscrew it to clean under it.

The Tenant argued that there was no damage done to the closet doors. If they needed new rollers it was due to normal wear and tear and not damage. The Tenant asserted that the scratches in both bathtubs were present at the start of his tenancy so he assumed that the Landlord was aware of them.

As for the utility bill, the Tenant submitted that he did not receive a copy of the last municipal bill by the time he vacated the rental unit. He argued that he later paid that bill and after checking with the municipality just prior to this hearing he determined that there was a credit balance of \$53.81 at the municipality in the Tenant's name.

The Landlord disputed the Tenant's submission and argued that she simply slid the garbage can track out and was able to clean underneath it without unscrewing it, as shown in the before and after pictures in her evidence. She stated that she had to turn the self-cleaning oven on three times before she was able to get it clean and there was no way the blinds were wiped as she could write her initials in the dust that was on them.

In closing, the Tenant stated that he received a cheque from the Landlord as a portion of his security deposit refund which he has since cashed. He could not recall the actual amount of that cheque and requested the balance of his deposit be returned.

The Landlord submitted that she thought the check was issued in the amount of \$750.00 less the utility bill of \$53.81. She asserted that she was told by the RTB that she could keep the amount for the utility bill and that she had to return the balance of the deposit. She could not recall the date she issued the cheque or when it was cashed.

Prior to concluding the hearing, I issued the Landlord an Oral Order to submit copies of the following documents to the RTB and to the Tenant no later than August 31, 2015:

- 1) A copy of the front and back of the cashed cheque issued to the Tenant for the partial security deposit return; and
- 2) A copy of the signed courier receipt confirming delivery of that cheque to the Tenant.

On August 24, 2015 three pages of evidence was received at the RTB from the Landlord and included the following: a cover letter; a copy of the front and back of the Landlord's cheque # 422 issued to the Tenant in the amount of \$696.19 on February 5, 2015 which was cashed on February 7, 2015; and copies of the Canada Post receipt, tracking receipt, and cash registered receipt.

Analysis

The *Residential Tenancy Act* (the *Act*), and the *Regulation* stipulate provisions relating to these matters as follows:

Regarding the Tenancy End Date

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Regarding Municipal Utilities

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.
- 7(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.

Regarding Damages

Section 32 (3) of the Act provides that 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.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that 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.

Regarding a Monetary Order

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. 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.
- 7(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.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations

or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Regarding the Filing fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Tenancy End Date

After consideration of the Landlord's contradictory submissions I favored the Tenant's submissions regarding when his tenancy ended. I favored the Tenant's submission that his tenancy ended on January 31, 2015, in part due to the fact that the Tenant stated he served the Landlord his one month effective the end of January, 2015; the Landlord filed her application for Dispute Resolution on February 5, 2015 on which she indicated the tenancy had ended; and the Tenant served his forwarding address to the Landlord on February 10, 2015.

Accordingly, based on the above, I find this tenancy ended on **January 31, 2015**, in accordance with section 45(1) of the *Act*.

The Utility Bill

The undisputed evidence was the Tenant was required to pay the municipal utilities and the utility account was switched into the Tenant's name during his tenancy. The last municipal bill was due on December 29, 2014. When the Tenant failed to pay the last utility bill on time and then vacated the property a month later, I conclude that he was in breach of his tenancy agreement.

There was no documentary evidence before me that would support the Tenant's submission that he also paid the outstanding bill creating a credit balance in his name with the municipality.

When municipal utility bills remain unpaid at the end of a tenancy the municipality usually applies all outstanding amounts and interest charges against the owner's property taxes until such time the bill is paid. Therefore, I find the Landlord did what was reasonable to mitigate her losses by paying the bill as soon as she found it remained outstanding to avoid unwanted interest charges and to avoid the bill being placed on her property tax account, as required by section 7(2) of the *Act*. Therefore, I find the Landlord provided sufficient evidence to support her claim for unpaid utilities in the amount of **\$53.81**, pursuant to sections 7(1) and 67 of the *Act*.

Damages

The Tenant accepted responsibility for the claim for carpet cleaning. Accordingly, I grant the Landlords application for carpet cleaning in the amount of **\$124.95**.

It was undisputed that the Tenant used screws and not small nails or picture hooks to hang things on the walls. I accept the Landlord's submission and photographic evidence that the Tenant left numerous screws in the wall which left large holes once removed, in breach of sections 32 and 37 of the *Act*.

The walls required materials and labour to patch, sand, and paint in order to repair. An itemized list was not submitted outlining the costs for materials and labour to repair the walls. Therefore, I determined the amount of compensation to be granted to the Landlord will be comprised of \$25.00 for supplies plus \$50.00 for labour for a total award of **\$75.00**, pursuant to sections 7(1) and 67 of the *Act*.

Upon review of the photographic evidence I accept the Landlord's submission that the Tenant failed to clean under the garbage can and that cleaning was able to be performed by simply sliding the garbage can assemble out. An itemized list was not provided which described the actual amount of time it took to clean under the garbage can. Therefore, I have determined the amount of the claim to be **\$10.00**, pursuant to sections 7(1) and 67 of the *Act*.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

A move in or a move out condition inspection report form was not completed or submitted. In addition, there were no before tenancy photographs or after tenancy photographs of the remaining items being claimed by the Landlord. Therefore, in the presence of the Tenant's disputed testimony, I find the Landlord submitted insufficient evidence to prove the Tenant caused damage to the bathtub and closet doors. Furthermore, there was insufficient evidence to support the remainder of the Landlords claim for cleaning, cleaning of the blinds, cleaning supplies, and hardware for the closet doors. Accordingly, the claims for all those items are dismissed, without leave to reapply.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$25.00**, pursuant to section 72(1) of the *Act*.

Monetary Order – this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The undisputed evidence was the Landlord returned \$696.19 of the \$750.00 security deposit to the Tenant on February 5, 2015. The security deposit was paid in March 2012 and based on the RTB Deposit Interest Calculator there was no accrued interest on this deposit. The Landlord remained in possession of **\$53.81** of the security deposit and filed her application on February 5, 2015, within 15 days of this tenancy ending.

Municipal Utilities	\$ 53.81
Carpet Cleaning	124.95
Wall Repairs	75.00
Cleaning	10.00
Filing Fee	<u>25.00</u>
SUBTOTAL	\$288.76
LESS: Security Deposit \$53.81+ Interest 0.00	<u>-53.81</u>
Offset amount due to the Landlord	<u>\$234.95</u>

Conclusion

The Landlord partially succeeded with her application and was awarded compensation in the amount of \$288.76. The award was offset against the \$53.81 security deposit retained by the Landlord leaving a balance payable to the Landlord in the amount of **\$234.95**.

The Landlord has been issued a Monetary Order in the amount of **\$234.95**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims 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: September 2, 2015

Residential Tenancy Branch

