Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order under the Residential Tenancy Act (the Act) for loss, to recover the filing fee, and an Order allowing them to retain the security deposit in partial satisfaction of the monetary claim.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Both parties acknowledged receiving the evidence of the other consisting of narrative and photographs. One of two tenants attended the hearing. The attending tenant testified the second tenant had requested an adjournment. The attending tenant testified that despite not having authored most of their evidence they had all evidence available to them, were knowledgeable of the circumstances of the tenancy and were able to respond to the landlord's application. The landlord argued against an adjournment. I found an adjournment as unnecessary based on the attendance of both parties and their respective ability to participate in the proceedings and respond to the claims and arguments of the other. Prior to concluding the hearing both parties in attendance acknowledged presenting all of the relevant evidence that they wished to present.

The hearing proceeded on the merits of the landlord's original application. I have reviewed all oral, written and document evidence before me that met the requirements

of the Rules of Procedure. However, only the evidence relevant to the landlord's application and the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began December 01, 2013 although the written tenancy agreement was entered into on October 10, 2013. The parties agreed the landlord permitted occupancy of the rental unit in November 2013. It must be noted the tenancy agreement is without addendum and states that the rent includes *water, stove and oven, dishwasher, refrigerator, window coverings, washer and dryer, lawn mower, weed whacker, hedge trimmer,* and *parking for 2 vehicles*. Rent in the amount of $1300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of $650.00, which they retain in trust. The tenancy ended June 30, 2015 when the tenants vacated.

The parties agree they conducted a mutual inspection of the unit at the start of the tenancy; however, the parties disagree on the landlord presenting the tenant with the Condition Inspection Report (CIR) for their determination in respect to the condition particulars. The tenant testified they were not shown the CIR, and the landlord testified they were but the tenant declined to sign the CIR. None the less, both parties did not dispute the rental unit was absent of notable deficiencies. The tenant described it as "good' and "nice house we thoroughly enjoyed " and the landlord coded the CIR on all aspects/entries as "good". The parties agree that at the end of the tenancy they conducted a mutual inspection and the landlord completed the CIR. The tenant testified they did not agree with the landlord's report and refused to complete any of the report or sign it.

The landlord makes the following monetary claims associated with their Monetary Order Worksheet dated July 09, 2015 in the amount of $3046.39.

During the hearing the landlord withdrew their claim of *fancy sprinkler $50.00, squeegee $20.00 and front floor mat $30.00.*

The landlord claims the tenant damaged the hardwood flooring in the unit: specifically, the landlord's claim is in respect to the floor in the master bedroom and the hallway. The landlord provided close-proximity photographs of the claimed damage, and the tenant provided photographs of unspecified flooring of the unit, from a greater distance. The landlord highlighted photographs in support of their claim the damage consisted of a series of scratches up to 45 inches in length, and several "dents and gouges". The tenant provided a photograph of the flooring described as a mark – similar to an abrasion - the width of 2 flooring planks. They did not dispute the landlord's claims of deficiencies in the flooring, or effectively disagreed with the landlord - claiming the landlord's assertions of damage as, "normal wear and tear". The landlord provided an estimate for *labour to remove and repair dents and scratches* in the amount of $400.00, plus provision of, *800 sq. New Top Coat To Remove Scratch + Scuffs, for $800.00* (as written) including rectifying the damaged area. The tenant did not effectively disagree with the landlord's explanation for repairs, however argued they are not responsible for renewal of hardwood flooring subject to only normal wear and tear.

The landlord claims the rental unit was left unclean after the tenant vacated. The landlord provided a series of photographs of the areas they determined to be unclean and the tenant provided a shorter series of contrasting photographs they claim more accurately depict the cleanliness of the rental unit. The proximity and focus of the landlord's and tenant's photographs was discussed during the hearing. The landlord disputed the tenant's photographs from a greater distance accurately depicted the cleanliness of the unit when compared to their photographs in closer resolution. The landlords highlighted their photographs displayed patterns of splatter markings and soiling as well as debris, while the tenant's photographs were from a greater distance and did not capture the condition of the surfaces nor were in focus. The landlord

provided an estimate in the amount of $367.50 from a cleaning service in support of their claim they personally expended 11 hours x 2 persons to clean the unit versus paying for the cleaning service. The tenant testified they left the rental unit sufficiently clean. The tenant provided affidavits from 3 other individuals, which effectively described the rental unit as “clean”, and “move-in ready”.

The landlord claims the tenant left the outdoors garden area deficient of soil, and in addition left discernable “holes” in the soil from the removal of plants – some of which the landlord claims were theirs. The tenant testified they did the gardening during the tenancy and at the end they attempted to return the garden to its original depiction and in the process “took away” an abundance of soil and some plants as they had initially supplied same to the garden and they considered them theirs. The landlord testified they had to purchase and replenish the soil because of the noticeable depletion of it. The landlord provided a receipt they confirmed was for 10 bags of soil from Canadian Tire at a cost of $9.99 each for a sum total of $111.89.

The landlord claims the tenant is responsible for the value of a gas powered grass trimmer, identified as a ‘weed wacker’ in the tenancy agreement. They claim the item was absent from the shed at the end of the tenancy, although noted to be there shortly before the tenancy ended. The tenant argued the item was never used and they acquired an electric model - losing track of the gas unit, which they assume was stolen at some point. The landlord did not provide supporting document evidence respecting the “weed wacker” or a similar item. The landlord testified the unit was used and the brand or particulars unknown; however, that it’s used value is $125.00.

The landlord claims the tenant kept or lost a 5.3 cubic foot chest freezer which they claim had been left on the property at the outset of the tenancy. The item was of unspecified brand, condition or age since new. The landlord acknowledged the item was not noted on the tenancy agreement as an item included in the rent; however, asserted they left it on the property. The tenant denies the landlord left the claimed chest freezer on the property and had no knowledge of such an item. None the less, the landlord placed a value of $300.00 for the freezer.

The landlord is claiming loss of rent revenue for the first half of July 2015 in the amount of $650.00. The landlord testified they postponed occupation of the rental unit by a new tenant, from a contracted July 01, 2015 to the middle of July 2015, as the rental unit required cleaning, the floor estimated, and the garden area levelled with additional soil – all as advanced in this application. The landlord claims the rental unit was effectively, not "move in" ready. The tenant disagreed with the landlord and submitted they doubted a new tenant had been secured for July 01, 2015.

Analysis

The parties may access resources and a copy of referenced publications at **< www.bc.ca/landlordtenant >**

The landlord, as applicant, bears the burden of proving their monetary claims.

I have reviewed all relevant submissions of the parties. On the preponderance of the relevant document and photograph submissions, and the relevant testimony of the parties, I find as follows on a balance of probabilities.

It must be known that pursuant to the Act a tenant is not responsible for reasonable or normal wear and tear of a rental unit. The landlord is claiming the tenant is responsible for *damage*: deterioration in excess of wear and tear.

Section 7 of the Act provides as follows in respect to all of the landlord's claims for loss 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.

Effectively, the landlord must satisfy each component of the test below:

1. *Proof the damage or loss exists,*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

The landlord bears the burden of establishing their claims by proving the existence of a loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can reasonably verify the monetary value or amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

Despite a mutually certified Condition Inspection Report, I accept the parties' respective evidence they effectively agreed at the start of the tenancy the rental unit was absent of discernable deficiencies so as to concern either party. Relevant to this matter, the parties agreed the rental unit flooring was absent of deficiencies.

In respect to the landlord's claim for damage to the hardwood flooring, I accept the evidence of both parties in finding that by the end of the tenancy the flooring surface was compromised beyond the realm of reasonable wear and tear in a portion of the master bedroom and hallway. I accept the landlord's estimate, in part, as representing the loss in value for the damaged portions of the flooring for which they should be compensated. However, I do not accept the landlord's argument the compensation extend to 800 square feet of the flooring area. I accept the testimony of the tenant that they are not responsible for refurbishment to the entire 800 feet of hardwood flooring. I find that to compensate the landlord for the full amount of their estimate would enrich the landlord for enhancement to areas which are not *damaged*, but rather subjected to solely normal wear and tear. As a result, I grant the landlord the mitigated set amount of **$600.00** for *damage* to the flooring.

In respect to the landlord's claim for cleaning, I find **Section 37** of the Act states the tenant is responsible to surrender the rental unit *reasonably clean* at the end of a tenancy. I prefer the close ratio photographs of the landlord over those of the tenant from a greater distance, which depict that portions of the rental unit were left unclean, but moreover noticeably unclean. As a result, I find the landlord has met the above test established by Section 7 of the Act. I find the landlord's claim for cleaning is not unreasonable nor extravagant therefore I grant the landlord the claimed amount for cleaning, of **$367.50.**

In respect to the landlord's claim for dirt, or soil, I have not been presented evidence the tenant operated a garden *without* the landlord's consent, or changed the landscape during the tenancy to accommodate a garden – which would have obligated the tenant to return the garden to its original condition upon vacating. None the less, the tenant did take the step to return the garden to a previous condition upon vacating by reclaiming or removing the top soil - added to the garden during the tenancy. In the process the landlord was left with a garden visibly reduced of soil and an uneven soil bed due to the removal of plants.

Residential Tenancy Policy Guideline 1. - **Landlord & Tenant – Responsibility for Residential Premises – Fences and Fixtures,** aptly explains whether chattels or property annexed / installed to realty remain personal property of a tenant or become realty – or a permanent fixture of the property. More simply, the guideline helps understand if an installation by a tenant becomes a permanent fixture of the rental property or if it remains moveable or must be removed by the tenant at the end of a tenancy. I find that installations such as outdoor plants and soil, once installed by a tenant, become a permanent fixture of the realty or rental property. In this matter their removal is apparent as damage to the garden. The guideline, in relevant part, further states:

> **6**. If, at the end of the tenancy, the tenant removes the fixture erected by him or her, he or she is responsible for repairing any damage caused to the premises or property.

In the absence of agreement by the parties to the removal of the soil, I accept the landlord's claim the tenant damaged the garden area by removing the soil from the garden - a fixture of the property – and the tenant is responsible for its repair. I accept the landlord's claim for 10 bags of soil. However, in the absence of evidence I find the landlord's claim of over $10.00 per bag of soil as extravagant. I grant the landlord the set amount of **$50.00** for soil.

In respect to the landlord's claim for a used gas grass trimmer, or 'weed wacker', I find the tenant acknowledged acceptance of the item as part of the contractual tenancy agreement. At the end of the tenancy it was not surrendered with the rental unit. While I have not been provided with sufficient evidence establishing the manufacturer, its age, the condition or new or used, I grant the landlord the nominal amount of **$25.00** in recognition of the loss.

In respect to the landlord's claim for a 5.3 cubic foot chest freezer, it was available to the landlord to include the freezer as an item of the tenancy, but failed to include it. I find insufficient evidence establishing the freezer was ever left with the rental unit. As a result, I **dismiss** this portion of the landlord's claim.

In respect to the landlord's claim for a loss of revenue for a portion of July 2015 rent, because of the actions or neglect of the tenant, the landlord did not present or provide evidence of a new tenancy agreement for July 01, 2015 which they claim to have consequently postponed – and as a result forwent half the payable rent. I find the landlord did not provide sufficient evidence to support they suffered a loss in this respect. As a result, I **dismiss** this portion of the landlord's claim.

As the landlord was partially successful in their application they are entitled to recover their filing fee from the tenant for a total award of **$1092.50**. The security deposit will be offset from the award made herein.

Calculation for Monetary Order is a follows:

Loss – hardwood flooring	$600.00

Loss - cleaning	$367.50
Loss- Soil	$50.00
Loss - gas grass trimmer / 'weed wacker'	$25.00
filing fee	$50.00
Total of monetary award to landlord	**$1092.50**
less tenant's security deposit: in trust	*-$650.00*
Monetary Order for landlord	**$442.50**

Conclusion

The landlord's application in part has been granted, and the balance dismissed.

I Order that the landlord may retain the security deposit of $650.00 in partial satisfaction of their award, and **I grant** the landlord a Monetary Order under Section 67 of the Act for the amount of **$442.50.** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: December 07, 2015

Residential Tenancy Branch