Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

On March 18, 2016 the tenant applied requesting return of double the deposit paid.

On June 24, 2016 the landlord applied requesting compensation for damage to the rental unit and to recover the filing fee costs from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenant's application in March 2016.

The tenant confirmed receipt of the landlords' amended application and evidence on July 2, 2016. The amended application included a request to retain the deposits and increased the monetary claim.

A review of evidence determined that each party had given the other those submissions provided to the Residential Tenancy Branch. The tenant confirmed she was able to view the digital evidence supplied by the landlord.

Issue(s) to be Decided

Is the tenant entitled to return of double the pet and security deposits?

Is the landlord entitled to compensation in the sum of $8,436.65?

May the landlord retain the pet and security deposits in satisfaction of the claim?

Background and Evidence

The tenancy commenced on September 29, 2015. Rent is $1,600.00 per month due on the first day of each month. A security deposit in the sum of $1,600.00 and pet deposit in the sum of $800.00 were paid. A copy of the tenancy agreement was supplied as evidence.

When questioned, the landlord confirmed the security deposit paid was equivalent to one months' rent.

The parties confirmed that a move-in condition inspection report was not completed. The landlord said that the rental unit was four years old and that all fixtures were of the same age.

The parties agreed that the tenancy ended effective February 29, 2016. They met at the rental unit on that date and walked through the unit. The landlord wrote a number of items on a piece of paper regarding repairs and cleaning; a copy was supplied as evidence. The tenant said she refused to sign that paper as the landlord could make changes to it without her knowledge.

There was no dispute that the tenant gave the landlord her forwarding address on February 29, 2016. The landlord said that the tenant did not give it in writing; that the tenant told the landlord what the address was and the landlord wrote the address down. The tenant said that she is not familiar with most of the legislation but the forwarding address requirement is one that she is fully aware of. The tenant said if the landlord had refused to write her address down she would have done so and handed it to the landlord.

The landlord has made the flowing claim for compensation:

Ceiling fan ($87.79) and installation ($11.280)	199.79
Replace house and mail keys – deadbolts $241.57 + $25.00)	266.57
Landlord labour – cleaning	400.00
Carpet repair- replacement	861.46
Repair scratched walls – landlord time	250.00
Replace fridge deli drawer	111.89
Landlord travel time to unit	260.00
Replace wood floors	2,820.30
Cost of flooring	3266.64
TOTAL	$8,436.65

There was no dispute that the tenant damaged the fan. The tenant said it was installed over her bed and when making the bed the sheets would hit the fan. The cord was also too long on the fan. The landlord said that it was just as cost-effective to replace the fan

and have it installed. A copy of an installation estimate and invoice for the fan were submitted as evidence.

The tenant confirmed she returned one of two sets of keys that had been given at the start of the tenancy. The landlord supplied a copy of an invoice for the cost of purchase and installation of the new deadbolts purchased on March 4, 2016. The landlord supplied a copy of a receipt issued in the sum of $25.00 by the strata for the mail box key.

The landlord supplied numerous photographs of the outside and inside of the house. Some walls, door jambs, cupboards and floors did not appear to be clean. Outside the walkways were dirty; there were cigarette butts and animal feces. The bathroom fan was not cleaned, the garage smelled of garbage that had been stored for weeks. Smalls beads were in the carpet and a heater. The wood floor was sticky; the landlord had to wash the floor on her hands and knees. The landlord shampooed the carpets. The landlord said it took three people five hours to finish cleaning the home and yard.

The landlord supplied photos of several areas of the carpet that appeared have pulls. A stair was frayed in one corner and while only several pictures of frays were supplied as evidence the landlord said over 25 seams were pulled out by the cats. The landlord obtained an estimate to have the master bedroom and stairway carpet replaced. The landlord submitted a March 2, 2016 estimate to replace the carpet. The estimate indicated that:

> *"all seams are slightly visible. We try to place seams in areas of least visibility. To avoid seams in high traffic area's it may be necessary to order extra material."*

The carpet has not yet been replaced.

The landlord supplied several photographs showing a few scratches on a corner of a wall, a dent and what appear to be scratches in another area of a wall. The landlord completed the drywall repair themselves and has charged for the time. The landlord believes the tenant's cat caused damage to the walls.

The landlord submitted a March 29, 2016 quote for the deli drawer that was broken. The drawer has not yet been replaced.

The landlord claimed costs for travel to and from the rental unit so that repairs could be completed.

The landlord said that the tenant was told not to install a fish tank in the rental unit but she did so, despite the concerns of the landlord. The tank was placed over the wood floors that were four years old. The landlord believes that every time the tenant would have worked on the fish tank water would be spilled on the floor. The landlord said that the joints along the boards have curled upward. The flooring is solid maple.

Photos showed the wood floor that appeared to be slight curled upward along the length of the room

The landlord submitted a June 28, 2016 email from a building company that quoted $6.98 per square foot for flooring. The quote explains that the less costly flooring is not being supplied to them any longer. There were too many returns from customers. The estimate states “you get what you pay for.” The quote goes on to state that the pricing is likely higher than other ones but this is due to the cost of top-grade wood that is of “exquisite quality.”

The landlord submitted a copy of an undated flooring installation estimate. The cost includes removal, disposal and installation.

The landlord referenced a letter from the new tenant that they submitted as evidence. That letter was not signed and the witness was not present to be cross examined.

The tenant that she had several friends helping her clean the night prior to moving out of the unit. The tenant also stated that she had offered to pay the landlord $200.00 for cleaning costs. The tenant said she cleaned the fridge, that the oven was left stained by the previous tenant and that she did not leave animal feces or cigarette butts on the property.

The tenant said that some of the photographs submitted by the landlord were taken prior to the end of the tenancy. The landlord responded that the properties information that could access on the digital photographs showed the date the pictures were taken; February 29, 2016. From a view of the list of photographs the modified date of the pictures could be seen. The pictures of the outside of the home and the oven were last modified on February 15, 2016; the balance of the photos were modified on February 29, 2016.

The tenant explained that the landlord came to the rental unit on a monthly basis and had never expressed dissatisfaction with the state of the home or the need for any repairs. The tenant said that the photos taken outside on the deck, the yard and oven were taken during the tenancy.

In relation to the wall and deli door damage the tenant said she had no idea what the landlord was referring to. The tenant said she understood the tenant before her had caused considerable damage to the home. A move-in inspection report was not completed, so the tenant did not pay attention to small damage to the walls or the fridge deli shelf. The tenant believes that this damage was caused by the previous tenant.

The tenant stated that the pictures did not allow the tenant to discern where they were taken in the unit. The tenant said that one area that showed some wall scratches appears to have been taken of an area of the wall where the fridge door hits the wall. Otherwise the tenant did not recognize the damage shown in the pictures.

In relation to floor damage the tenant said that her cat did not scratch any carpeting. The fish tank was placed just inside the door and was not near the area where the picture of the flooring was taken by the landlord. Toward the start of the tenancy the tenant had asked the landlord about problems with the flooring as she was afraid she would be blamed for the damage. There was a scratch near the patio door and she was told the previous tenant had caused that damage.

The tenant took photos of the rental unit at the beginning of the tenancy. Those photos were on someone else's' phone and she can longer access that phone. The tenant stated she had treated the home nicely, that during the monthly inspections the landlord had been happy with how she treated the home.

The landlord responded that after each monthly inspection they were not in fact happy about the state of the unit.

Analysis

Section 23 of the Act requires a landlord to schedule a condition inspection report at the start of the tenancy. The parties must sign the report and the tenant must be given a copy of the report, in accordance with the Regulation. This did not occur.

When a landlord fails to complete a move-in condition inspection report in compliance with section 23 of the Act, section 24(2) of the Act provides:

> *(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 23 (3)* [2 opportunities for inspection]*,*
> >
> > *(b) having complied with section 23 (3), does not participate on either occasion, or*
> >
> > *(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Section 38(1) of the Act requires a landlord to return the deposit to a tenant within 15 days of receiving the tenant's forwarding address in writing, or the date the tenancy ends, whichever date is latest. I find that the landlord did receive the tenants' written forwarding address on February 29, 2016 when the tenant provided that address and the landlord chose to write the address down. I have rejected any suggestion that since the landlord wrote the address down rather than the tenant, the address was not given in writing. I have accepted the tenants' submission that if the landlord had refused to write down the address the tenant would have proceeded to do so. Further, the landlord has confirmed that they had the address on February 29, 2016. Therefore, pursuant to section 71 of the Act I find the address was sufficiently given.

I find pursuant to section 24(2) of the Act that when the landlord failed to complete a move-in condition inspection report the landlord extinguished the right to claim against

the deposits. Therefore, pursuant to section 38(5) of the Act the landlord was required to return both deposits to the tenant within 15 days of February 29, 2016. The landlord had forfeited the right to claim against the deposits and did not have the right to hold the deposits beyond 15 days.

Section 38(6) of the Act provides:

> *(6) If a landlord does not comply with subsection (1), the landlord*
>
> > *(a) may not make a claim against the security deposit or any pet damage deposit, and*
> >
> > *(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

Therefore, pursuant to section 38(6) of the Act I find that the landlord is holding a pet deposit in the sum of $1,600.00 and a security deposit in the sum of $3,200.00.

I have then considered the monetary claim made by the landlord.

There is no dispute that the fan was damaged as a result of the tenants' sheets becoming caught in the fan. I find that this damage was due to negligence on the part of the tenant and that the landlord is entitled to the sum claimed for the fan and installation.

The tenant has confirmed that a set of keys were not returned to the landlord. Therefore, I find that the landlord is entitled to the cost of new deadbolts, required to ensure the security of the new tenant.

In the absence of a move-in and move-out condition inspection report the landlord must provide a preponderance of evidence that any damage in the rental unit was caused by the tenant. There was no agreement regarding the state of the home at the start of the tenancy as the tenant was not offered the opportunity to participate in an inspection.

From the evidence before me I find that the tenant did not sufficiently clean the home. I have not relied on the photos taken on February 15, 2016 as those were taken prior to the end of the tenancy. However, the balance of photographs show the unit was not left reasonably clean as required by the Act. Therefore, I find that the landlord is entitled to one-half of the sum claimed for cleaning.

From the evidence before me I find that the estimate for carpet repairs indicates that the problems with the carpet was one more of an installation issue, where all seams were highly visible. The estimate suggests that seams in high traffic areas would pose problems and that installation should avoid high traffic areas. I do find that it is highly likely that the tenants' cat caused some damage to the stairs. From the photograph taken this does not appear to an area that would be affected by foot traffic. Therefore, I

find that the landlord is entitled to nominal compensation for repair to the carpet in the sum of $50.00.

I find that the small number of scratches on the walls indicated in the pictures were the result of normal wear and tear and, possibly those that pre-existed. The tenant was not given the opportunity to record any pre-existing damage and has questioned the presence of these marks as caused by her. Therefore, I find that the claim for wall and baseboard repair is dismissed. Further, the photos the landlord referenced that the landlord said showed feces along the wall were illegible.

I find that there is no evidence the tenant caused any damage to the deli drawer. This was not examined at the start of the tenancy and the tenant denied any knowledge of a broken drawer. Therefore I find that this claim is dismissed.

The landlord has claimed the cost of travel to the rental unit. The only costs that can be considered are those related directly to a breach of the Act. During the hearing I explained that the cost of driving to the rental unit would be dismissed. The landlord may be able to claim this as a business expense.

I have carefully reviewed the estimate for flooring supplied by the landlord. From the evidence before me it appears that the wood originally installed in the unit was not of high quality. The landlord has provided a quote for wood described as “exquisite.” The tenant explained that there were problems with the flooring when she moved in and the estimate mentions dissatisfied customers, who returned that type of wood. This leads me to question the cause of any damage to the floors. There was no evidence no evidence of any eater stains on the flooring and the damage appeared to run the length of the floor.

Therefore, in the absence of evidence of the state of the flooring at the start of the tenancy I am not convinced, on the balance of probabilities, that the tenant caused any damage to the flooring of the rental unit. I find it is just as likely that any flooring issue is a result of the quality of the wood originally installed. Therefore, I find that this portion of the claim is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Ceiling fan ($87.79) and installation ($11.280)	199.79	199.79
Replace house and mail keys – deadbolts $241.57 + $25.00)	266.57	266.57
Landlord labour – cleaning	400.00	200.00
Carpet repair- replacement	861.46	50.00
Repair scratched walls – landlord time	250.00	0
Replace fridge deli drawer	111.89	0
Landlord travel time to unit	260.00	0

Replace wood floors	2,820.30	0
Cost of flooring	3266.64	0
TOTAL	$8,436.65	$716.36

I find that the balance of the claim is dismissed.

As each application has merit I find the filing fee costs are set off against the other.

I find that the landlord is entitled to retain the tenants' security deposit in the amount of $716.36 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary order for the balance of the deposits, $3,283.64. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlords' right to retain the deposits is extinguished.

The pet and security deposits are doubled in value.

The landlord is entitled to compensation in the sum of $716.36; the balance of the claim is dismissed.

The landlord may deduct $716.36 from the deposits.

The tenant is entitled to return of the balance of the deposits in the sum of $3,283.64.

Filing fee costs are set off against the other.

This decision is final and binding and 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: July 29, 2016

Residential Tenancy Branch