Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This teleconference hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for damage to the rental unit and monetary losses under the *Residential Tenancy Act,* the Regulation and the tenancy agreement, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing began on December 6, 2016 and was adjourned to January 19, 2017. The reason for the adjournment was due to the fact the Tenant alleged the Landlord had submitted a copy of the Move out Condition Inspection Report which had been altered by the Landlord's son. I adjourned the hearing by Interim Decision dated December 6, 2016 wherein I specifically noted the purpose of the continuation was to give the Landlord an opportunity to respond to the Tenant's allegation. Notably, the Landlord's son was not at the January 19, 2017 hearing, despite the fact the allegation was that *he* had altered the Move-out Condition Inspection Report.

The Landlord and the Tenant appeared at both hearings. They were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for damage to the rental unit?

2. What should happen to the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began February 1, 2015. Monthly rent was payable in the amount of $1,200.00 and the Tenant paid a security deposit in the amount $600.00

The Landlord stated that the tenancy ended on May 22, 2016 pursuant to written notice to end the tenancy sent by the Tenant by email on May 21, 2016.

The Landlord sought monetary compensation related to the insufficient notice given by the Tenant. She confirmed that the rental unit was re-rented as of June 1, 2016. She further stated that son, acting as her agent, J.P., was paid $800.00 as a "re-rental fee" to rent the unit as quickly as possible. She confirmed he was able to do so as of June 1, 2016.

When I asked the Landlord how she came to the figure of $800.00 as a "re-rental fee", she stated that he was able to re-rent the unit for $1,400.00 and as such she paid him one half a month's rent as a fee of $700.00 in addition to $100.00 for his time as he had to "drop everything". The Landlord further testified that to her knowledge rental management companies charge a full month's rent and she does not believe they would have been able to re-rent it within 10 days as her son did.

In total, the Landlord claimed she paid J.P. $1,000.00 for his time including the re-rental fee, and further sums for his labour, as well as reimbursing him for supplies he purchased.

The Landlord also claimed cleaning costs of $100.00. She stated that these were the actual costs incurred because with such short notice given by the Tenant, they had no option but to hire others to do the cleaning. The Landlord also stated that her son, J.P., did most of the repairs as well and was paid the sum of $200.00 for his time.

Introduced in evidence was a copy of the Move in and Move out Condition Inspection Report which was submitted by the Landlord in support of her claim for the cost to clean and repair the rental unit. The Landlord confirmed the report was completed by her son as her agent. This document indicates the Tenant agreed the Landlord could retain her

$600.00 security deposit. This document also confirms that the Tenant also provided her forwarding address at that time.

The Tenant testified on her own behalf. She disputed the amounts claimed by the Landlord. She further stated that she submitted a copy of the *original* Move out Condition Inspection Report in evidence the day before the hearing, December 5, 2016. That evidence was not before me at the December 6, 2016 hearing.

The Tenant submitted that the Move out Condition Inspection Report submitted by the Landlord was altered after she signed it. She stated that the original document was altered as follows;

- the following words in italics were added after she signed in the noted sections:
    - "closet doors off" under *Woodwork, Doors, Trim section*;
    - "Large holes in wall from mounting TV Blinds – slats missing, dirty" in the *Family Room section*;
    - "Drawers need repair" and "bulbs out" under the *Kitchen Cabinets, Counters, Closets, Cupboards section*;
    - "Towel rack moved – holes in wall" and "bulbs out, fixture wobbly" in the *bathroom section;*
    - "Balcony dirty" in the *other rooms section;* and
    - "Dryer vent disconnected" in the *Part III—Appliances section.*

- a check mark was added in the "Smoke Alarm(s) tested section for both move-in and move-out; and,

- the Landlord's signature and date "February 1, 2015" were not included on the original.

The Tenant testified that she did not look clearly at the Move out Condition Inspection Report submitted by the Landlord in evidence until shortly before the hearing as it appeared the same, but upon careful review she noticed the document had been altered.

The Tenant further submitted that had the rental unit been as dirty and unclean as claimed by the Landlord, it would not have been rented out as quickly as it was and for a higher amount. She also stated that she was aware that her short notice made her potentially liable for the June rent, but in fact the Landlord did not suffer any losses in

this regard as the rental unit was re-rented for more. Finally, she stated that there is no authority to grant the Landlord recovery of a "rental agent fee", and she opposes their request for recovery of this amount.

The Landlord's son and agent, J.P., also testified on behalf of the Landlord. He testified that he completed the move out report and provided it to his mother. He testified that that he did not alter the Move out Condition Inspection Report after the Tenant signed it.

J.P. also confirmed that he was paid $200.00 to repair the unit as well as an $800.00 "re-rental fee". He further confirmed that he is in the business of property management for his mother, as well as "some other rental units".

J.P. further stated that he showed the rental unit approximately 4-5 times. He further stated that he spent approximately 10-12 hours performing the repairs necessary, and a further 5 hours into re-renting the rental unit.

At the conclusion of the December 6, 2016 hearing, and by Interim Decision, I ordered the Tenant to serve her evidence, and in particular, a copy of the original Move out Condition Inspection Report, on the Landlord.

When the hearing reconvened, the Tenant testified that on December 29, 2016 at 12:09 p.m. (P.S.T.) she sent an email to the Landlord with her evidence including a scanned colour copy of the Move-Out Condition Inspection Report which had been submitted to the Branch on December 5, 2016.

The Landlord stated that she did not receive the Tenants' evidence. When I asked her if she received an email from the Tenant she responded: "I get a lot of emails, and I can't say whether I received the email, but I can say if I saw one from her I would not have opened it". I informed the Landlord that I found it unusual that she would not open an email from the Tenant sent on December 29, 2016 when she would have been expecting documents from the Tenant, and in particular a document which the Tenant alleges the Landlord's son altered.

During the hearing on January 19, 2017, I asked the Landlord *who* provided her with the Move out Condition Inspection Report which she provided in evidence on June 16, 2016. She responded: "it was in our file in relation to the apartment". When I asked her *who* filled it out, she stated that she did not know. When I brought to her attention that the name of the agent noted on the Move out Condition Inspection Report was J.P., who had attended the December 6, 2016 hearing and advised he was the Landlord's

son and their agent, she responded “I was not there when it was filled out.” She then stated that she “had nothing further to say about that”.

At the conclusion of the hearing on January 19, 2017, I informed the Landlord that I had concerns with her evidence in that she had previously submitted the Move Out Condition Inspection Report as evidence of the condition of the rental unit, confirmed her son had acted as her agent and filled out for her, and provided it to her, and then at this hearing suggested it “appeared in a folder” and that she did not know who completed it. I further informed her that I was concerned that a serious allegation had been made against her son of altering evidence and he chose not to attend the hearing. In response the Landlord stated that she expected to be *served* with the documents in accordance with the *Rules of Procedure.*

I then asked the Landlord if she wanted an adjournment to receive this document by registered mail, to which she responded “I’m done”.

Analysis

After careful consideration of the evidence before me, and the testimony of the parties as well as the Landlord’s agent, J.P., I find as follows.

I find that the Move out Condition Inspection Report filed in evidence by the Landlord on June 16, 2016 is not a true copy of the report which was completed at the end of the tenancy. I find the document submitted in evidence by the Landlord was altered after it was signed by the Tenant and for the purpose of supporting the Landlord’s claim for monetary compensation from the Tenant.

I accept the evidence of the Tenant that the Move out Condition Inspection Report submitted by the Landlord in evidence was altered after she signed it. During the hearing on December 6, 2016 the Tenant provided detailed testimony of the additions and alterations that were made to this document. The copy submitted by the Tenant on December 5, 2016 confirms the testimony of the Tenant in this regard.

I find the Tenant sent a true copy of the original Move out Condition Inspection Report to the Landlord by email on December 29, 2016.

The Landlord submitted that she was not properly served with the evidence as it was sent by email. As noted, during the hearing I offered the Landlord an opportunity for a further adjournment to permit the service of the evidence by registered mail. The Landlord declined my request and stated she was “done”.

Pursuant to Rule 3.17 of the *Residential Tenancy Branch Rules of Procedure,* I considered the evidence submitted by the Tenant on December 5, 2016. For greater clarity that Rule reads as follows:

> **3.17 Consideration of new and relevant evidence**
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> Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.
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> The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.
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> Both parties must have the opportunity to be heard on the question of accepting late evidence.
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> If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

As noted, I provided the Landlord an opportunity for a further adjournment to ensure she received the Tenant's evidence by registered mail. The Landlord refused my offer.

In all the circumstances I find that a further adjournment of the hearing is not appropriate.

I decided to consider the Tenant's evidence and in doing so apply Rules 7.8 and 7.9 which read as follows:

> **7.8 Adjournment after the dispute resolution hearing begins**
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> At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.
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> A party or a party's agent may request that a hearing be adjourned.
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> The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I provided the Landlord an opportunity to present submissions with respect to an adjournment; in response, the Landlord specifically declined my offer of an adjournment.

Based on the allegations made during the hearing, I find that an adjournment will not result in a resolution.

I accept the Tenant's evidence that she sent a colour copy of the original Move out Condition Inspection Report to the Landlord by email on December 29, 2016. The Landlord admitted during the January 19, 2017 hearing that she would not have opened an email from the Tenant. I find it likely that the Landlord received the email and refused or neglected to open the email and attachments sent by the Tenant on December 29, 2016. Consequently, I find it likely that she would similarly refuse to accept registered mail if an adjournment were granted to permit service of the Tenant's evidence in this manner.

As noted, the Tenant provided detailed submissions as to the alterations made to the Move out Condition Inspection Report during her testimony on December 6, 2016. Accordingly, and although the Landlord claims she did not receive the December 29, 2016 email and attachments, the Landlord was provided a fair opportunity to respond to the specific allegations of the Tenant as it relates to the report as well as the condition of the rental.

When the hearing reconvened on January 19, 2017, I informed the Landlord that the Tenant's testimony as to the alterations made on the copy of the report submitted by the Landlord appeared to be supported by the copy of the report the Tenant submitted. In

response, the Landlord testified that the copy of the Move out Condition Inspection Report she submitted in evidence was “found in a folder” and she further testified that she could not say who completed the report as she was not there when it was done. The Landlord’s testimony on January 19, 2017 was inconsistent with her testimony on December 6, 2016 wherein she testified her son completed the report and provided it to her in support of the fees he charged her for cleaning and repairing the rental unit, as well as evidence of the condition of the rental unit at the end of the tenancy.

Based on the Landlord’s inconsistent testimony on December 6, 2016 and January 19, 2017, and my finding that Move out Condition Inspection Report submitted in evidence was altered after the Tenant signed it, I find the Landlord’s credibility to be insufficient to make a finding in her favour for the amounts claimed. I therefore dismiss her claim for compensation from the Tenant.

The Landlord sought to retain the Tenant’s security deposit towards damages and cleaning of the rental unit.

Section 38 of the *Residential Tenancy Act* deals with the return of a security deposit and reads as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

By altering the Move out Condition Inspection Report after the Tenant signed it, the Landlord failed to perform the outgoing condition inspection reports in accordance with the *Act.* Accordingly, the Landlord extinguished her right to claim against the security deposit for damages, pursuant to section 36(5).

Having extinguished her right to claim against the security deposit, the only option for the Landlord, pursuant to section 38(1), was to return the deposit within 15 days of the end of the tenancy and receipt of the Tenant's forwarding address. The Landlord failed to do so and therefore pursuant to sections 38(6) and 67 must pay the Tenant the sum of **$1,200.00** representing double her $600.00 security deposit.

Conclusion

The Move out Condition Inspection Report submitted in evidence by the Landlord was altered after it was signed by the Tenant. The Landlord's testimony in this regard was inconsistent and therefore not credible. The Landlord's claim for compensation is dismissed.

Having altered the outgoing report, the Landlord failed to complete the report in accordance with the *Residential Tenancy Act,* and therefore extinguished her right to

claim against the Tenant's security deposit. The Landlord was therefore obligated to return the Tenant's security deposit within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address in writing. Having failed to do so, the Landlord breached section 38(1) of the *Act,* and is obligated to pay the Tenant double her security deposit pursuant to section 38(6).

The Tenant is granted a Monetary Order in the amount of **$1,200.00**. This Order must be served on the Landlord as soon as possible. Should the Landlord fail to pay the amount ordered the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

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: January 25, 2017

Residential Tenancy Branch