



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SMALLWOOD PACIFIC PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDCT MNDCL FFL

Introduction

This hearing dealt with application from both the landlords and tenant under the *Residential Tenancy Act* (the *Act*).

The tenant named the personal landlord and applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- a monetary award for damages and loss pursuant to section 67.

The corporate landlord applied for

- a monetary order for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord PS (the “landlord”) primarily spoke on behalf of both the corporate landlord and the named personal landlord.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant’s application and evidence. The tenant confirmed receipt of the landlord’s application and evidence. Based on the undisputed evidence I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is the tenant entitled to recover the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in August, 2011 and ended May 31, 2018. A security deposit of \$525.00 was paid at the start of the tenancy and is still held by the landlords.

At the start of the tenancy a move-in condition inspection report was prepared. The copy of the report submitted into evidence by the parties is signed by the tenant but not signed by the landlord in the appropriate place. The landlord testified that the landlord's agent completed the majority of the form including providing the name of the agent, their contact information and the condition of the suite. The landlord submits that the condition inspection report is substantially complete and the absence of the landlord's signature should not invalidate the agreement.

The tenant did not participate in a move-out condition inspection at the end of the tenancy. The tenant testified that she was provided with an initial opportunity to attend on May 31, 2018 but did not participate on that date. The landlord subsequently issued a written Final Notice to participate in a condition inspection by posting on the rental unit door. The tenant said the Final Notice was not received as she had already vacated the rental unit.

The landlord inspected the rental suite without the tenant and completed the condition inspection report. The landlord testified that the rental unit was not in a rentable state and required considerable cleaning and maintenance. The landlord testified that the tenant issued a letter to the landlord instructing them to make appropriate deductions from the deposit and return the balance of the security deposit. The tenant disputes that they intended to allow the landlords to unilaterally make deductions and testified they did not give written authorization allowing the landlord to make any deductions.

The landlord seeks a monetary award of \$1,276.26 for the following items:

Item	Amount
Dry Cleaning Drapes	\$320.00
Cleaning (10 Hours)	\$250.00
Labour Hours – Changing Light Fixtures	\$35.00
Fungal Spore Analysis	\$616.65
Replacement of Lock	\$32.21
Replacement of Master Lock	\$22.40
TOTAL	\$1,276.26

The landlord submitted various receipts, invoices and photographs of the rental suite into evidence in support of their claim for a monetary award.

The tenant seeks a monetary award of double the security deposit for this tenancy, \$1,050.00 and an award of \$200.00 for the replacement cost of bedspring and mattress which they say

were damaged by rodents in the suite. The tenant submits that the landlord was aware of the rodent problem but did not take adequate steps to resolve the issue.

Analysis

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit at the start of the tenancy and complete a condition inspection report in accordance with the regulations. The parties must sign the condition inspection report.

The parties agree that the landlord failed to sign the condition inspection report in the space provided for the landlord's signature. The landlord submits that the report is substantially completed. The landlord has provided their initials on other portions of the report and has written their name on the first page of the report. I find that there is sufficient evidence that the landlord completed the move-in condition inspection report and agreed with the assessment of the condition at the start of the tenancy. I find that the absence of the landlord's signature on the specific space on the second page of the report is merely a cosmetic error and does not invalidate the report. I find that a condition inspection report was prepared by the parties at the start of the tenancy.

I accept the evidence of the parties that the tenant did not participate in a move-out inspection. I accept the evidence that the landlord offered two opportunities as well as inviting the tenant to provide dates and times that would be agreeable to participate. I find that the landlord complied with the requirements of the Act to provide the tenant with opportunities to participate in a move-out inspection. I find that the tenant did not participate in a move-out inspection. Accordingly, I find that the tenant has extinguished their right to a return of the security deposit pursuant to section 36(1) of the Act.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the tenant's claim for monetary award for replacement of mattress and bedspring. I find that photographs of some damage to items are insufficient to show on a balance of probabilities that the damage resulted due to the actions or negligence of the landlord. Furthermore, I find that the tenant has shown no documentary

evidence in support of the amount of monetary award sought. For these reasons I dismiss this portion of the tenant's claim.

I find there is insufficient evidence in support of the full amount of the landlords' monetary claim. I accept the evidence that the tenant did not return all of the keys to the rental suite when the tenancy ended and that the landlord needed to commission new locks for the suite and building. Accordingly, I issue a monetary award in the amount of \$54.61 as claimed for the cost of replacement of locks.

I do not find that the cost of fungal spore analysis is a cost recoverable under the *Act*. The evidence presented is that the landlord chose to commission a report as the tenant had expressed concern and commissioned a separate report regarding the condition of the rental suite. The parties are certainly free to spend their money however they wish, including by hiring third parties to prepare reports. I find that the landlord was not obligated to prepare a report nor was the report necessitated by a violation by the tenant. Therefore, I dismiss this portion of the landlord's claim.

I find that the amount claimed by the landlord for cleaning and labour in the rental suite to be excessive. I find that the evidence of the condition of the suite shows that some work was required but not to the extent that the landlord claims. I accept that cleaning and work was necessitated due to the state of the suite at the end of the tenancy. However, based on the evidence I find that 10 hours of cleaning time to be excessive. I find that a more appropriate assessment of the monetary losses is \$125.00, approximately 5 hours of cleaning.

I accept the evidence that the landlord had to perform work in the suite replacing and removing light fixtures in the rental suite. I accept the cost of the labour hours to be \$35.00.

I accept the landlord's evidence that the drapes in the rental suite required dry cleaning. I accept the evidence that the cost of the dry cleaning was \$320.00. I issue a monetary award in that amount accordingly.

As the landlord's application was not wholly successful I decline to issue an order allowing the recovery of filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$525.00 security deposit in satisfaction of the monetary award issued in the landlord's favour.

Conclusion

Pursuant to section 67 of the *Act*, I issue a monetary award in the landlord's favour for the amount of \$525.00 under the following terms. I order that the landlord retain this amount from

the security deposit in full satisfaction of their claim. As the remainder of the monetary award is \$9.61, I decline to issue a monetary award for this minimal amount.

Item	Amount
Dry Cleaning Drapes	\$320.00
Cleaning	\$125.00
Labour Hours – Changing Light Fixtures	\$35.00
Replacement of Lock	\$32.21
Replacement of Master Lock	\$22.40
Less Security Deposit	-\$525.00
TOTAL	\$9.61

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: November 22, 2018

Residential Tenancy Branch