Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
MNDC MNSD RPP OLC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on December 8, 2014, to obtain a Monetary Order for: damage to the unit, site, or property, to keep part or all of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on September 22, 2014, to obtain a Monetary Order for: the return of his security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to have the Landlord comply with the *Act,* regulation, or tenancy agreement, for the return of the Tenant's personal possessions; and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other, excluding the October 24, 2014 and October 3, 2014 letters written by the Landlord to the Residential Tenancy Branch (RTB). The Landlord affirmed that he had not served the Tenant with copies of the two letters which he had sent to the RTB. Accordingly, I considered all relevant documentary evidence that was submitted by each party, except for the two October 2015 letters sent to the RTB by the Landlord.

At the outset of the hearing 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.

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 which includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. Has the Tenant proven entitlement to monetary compensation?
3. Does the Landlord still possess the Tenant's personal possessions?

Background and Evidence

The undisputed evidence included that the parties entered into a verbal month to month tenancy agreement that began sometime after March 13, 2013. Rent was initially $500.00 per month and was reduced to $430.00 per month during the last few months of the tenancy. On or around March 13, 2013, the Tenant paid $250.00 as the security deposit. The Tenant vacated the property by August 1, 2014 and the tenancy ended. No condition inspection report forms were completed at move in or at move out.

The Tenant submitted that he provided his forwarding address to the Landlord on August 1, 2014, by leaving a note listing his forwarding address in the mailbox in which rent was usually placed, and by sending an email to the Landlord on the same date. The Landlord confirmed retrieving the note from the mail box on or around August 4, 2014, and by email but he was not certain as to the date the email was received.

The Tenant described his rental unit as being one of three bedrooms in a three level house where he shared common areas with two other tenants. He stated that the entrance was on the main level, three bedrooms on the second level, and the kitchen, dining room, and bathroom was on the top level. There were 1 1 /2 bathrooms and all areas were considered shared space except for each tenant's bedroom.

It was not until after the Landlord began speaking about another long term tenant Ms. "D", and my request for further clarification, that he provided a more detailed description of the house in which the Tenant's rental room was located. He submitted that the Tenant's room was located in one of three self-contained suites which were located in a very large 70 to 80 year old house. The Landlord stated that he has owned this house since 2000 and that he rents the other two self-contained suites under separate tenancy agreements as full suites and not as rental rooms with common areas. The Tenant's rental unit (his bedroom) is located in one of the 3 separate self-contained suites and the only suite in which the Landlord enters into tenancies for rooms with shared spaces.

The Landlord argued that the rental arrangements for the Tenant's area happened in what he referred to as a "piece meal fashion" which he submitted was the reason why condition inspection reports were not completed. He stated that it was practically impossible to conduct condition inspections because he would allow existing tenants to bring in new tenants to fill bedrooms as they became vacant. He argued it worked best that way as tenants would usually bring in their friends.

The Landlord asserted that when the Tenant moved in, one of the other rooms had been occupied by “G” from the fall of 2012 to May 2014 and the third bedroom was vacant. The Tenant brought a friend to rent the third bedroom who was there for only a few months starting from January 2014. The Landlord could not provide dates as to when this friend vacated and argued that he had very little communication with this tenant. He then argued that he could not schedule a move out inspection because of the Tenant’s behaviors. After further clarification the Landlord confirmed that here had not been a restraining order applied for or issued and that he had not considered arranging an agent to attend an inspection on his behalf.

The Tenant disputed the Landlord’s submission and stated that when he moved into his rental bedroom the other two rooms were occupied by “H” and “M”. He submitted that “M” moved out the following month and he and “H” found “G” to move into his room while he relocated into the room that had been previously occupied by “M”. Then “H” moved out a few months later and the Tenant recommended another friend who spoke with the Landlord and was approved to move in.

The Tenant presented the merits of his application first, seeking the return of his $250.00 security deposit and the return of his two golf clubs or in the absence of the golf clubs being returned monetary compensation of $221.04 for the golf clubs which the Landlord took and refused to return.

The Tenant pointed to a July 11, 2014 email provided in his documentary evidence which included a notice of entry from the Landlord to enter the suite on July 17th with an electrician, in order to determine the requirements to install a dryer in their suite. He argued that on July 17, 2014, while he was at work, he received a text message from another tenant who said he saw the Tenant’s personal possessions left out on the street. He said he contacted the Landlord, as the Landlord was the only one in the house at that time.

A second string of emails, between the Tenant and Landlord, were provided in evidence which were dated July 17, 2014, where the Landlord confirmed that he removed items from a bedroom in the rental unit and where the Landlord wrote:

> *Those items (the beer making equipment and bottles) which I presumed to be yours were left behind. Everything else in [tenant’s name J…] room could reasonably be assumed to be [tenant’s name J…] and were removed.*

The Tenant submitted that his possessions were being stored in the vacant bedroom that had previously been occupied by his friend, another tenant named “J”, and was inspected by the Landlord on July 1, 2014. He asserted that he had not placed any of his possession in that room until after the Landlord inspected it on July 1, 2014. He pointed to the email string provided in evidence dated June 27, 2014, where the Landlord wrote:

> *... Regardless of his circumstances, his belongingsd need to be gone by July 1st. I want to let you know that I will be by at 4:00 p.m. to check and ensure that his things are gone* [Reproduced as written]

The Tenant testified that after the email communications between July 14 and 17, 2014, the Landlord returned his camping and sports equipment, which were removed by the Landlord, but not his two golf clubs. The Tenant said he sent the Landlord pictures of his other golf clubs to prove his putter and pitching wedge were part of his set, and he also provided the Landlord with photographs and evidence that he belonged to a pitch and put group which would explain why his putter and pitching wedge were separate from the rest of his clubs. Despite his continued efforts to have the Landlord return his golf clubs the Landlord continued to refuse.

In addition to the above mentioned documentary evidence, the Tenant stated that he provided the Landlord with proof of his membership in a pitch and put club and proof of the value of his putter and pitching wedge, based on estimates.

The Landlord testified and confirmed that he is still holding the Tenant's security deposit and that he did not return the two golf clubs to the Tenant. The Landlord stated that he removed the articles from the bedroom on July 17, 2014, because that room was supposed to have been emptied long before he attended on July 17, 2014.

The Landlord submitted that he determined the golf clubs to be J's possessions, the tenant who had vacated the rental property, based on the Landlord's own interpretation. He stated that clearly he thought some of the items were the Tenants, which he returned to the Tenant and argued that he had determined the golf clubs to be J's because they were at the bottom of a large bag that contained wet suits in the bedroom that J had previously occupied.

I asked the Landlord why he did not return the golf clubs to the Tenant after receiving the Tenant's emails, photographs, and explanations that they were the Tenant's possessions and not J's. The Landlord stated that he believed the golf clubs to be J's. Upon further questioning, the Landlord stated that he no longer had the golf clubs in his possession because he gave them to a thrift store sometime in mid October 2014.

I asked the Landlord what gave him the authority to remove the golf clubs from the rental property and then discard of them. The Landlord responded that he considered the golf clubs, and other articles he removed, to be abandoned property, left by J, the tenant who was to have vacated the property and who was required to clear out his

possessions before July 1, 2014, as per the Landlord's email provided in the Tenant's submission.

The Tenant reiterated that J's room had been emptied and was completely vacant when the Landlord conducted his inspection on July 1, 2014. He argued that there was no abandoned property left in that room by J. He admitted that after the Landlord attended on July 1st to inspect J's room, he began to store some of his property in that vacant room. He argued that he provided the Landlord proof that the two golf clubs that were removed belonged to his set, which were a signature issue, yet the Landlord chose to continue to hang onto them and would not return them to him. Therefore, he should be compensated for them.

The Landlord presented the merits of his application seeking $1,932.00 for costs incurred to clean the rental unit and repaint it. He submitted that when he attended the rental unit on August 4, 2014, he found it to be packed with furniture that he believed was left behind by the Tenant. He submitted that there was furniture throughout the rental unit and in the Tenant's bedroom. He stated that there was a bed, dresser, a large mirror attached to the back of the door, and other articles left in the Tenant's room. He said he submitted a witness statement into evidence that was written by Ms. D. that spoke to the condition the rental unit was in on August 4, 2014.

The Landlord stated the Ms. D. has been a tenant for 2 ½ to 3 years in the 2 bedroom self-contained suite that was also located in the large house. He hired Ms. D. to conduct the cleaning of the rental suite that was occupied by the Tenant.

The Landlord confirmed that there were no written tenancy agreements for the occupants of the bedrooms in the self-contained suite where the Tenant resided. After I rephrased the Landlord's submissions throughout the hearing, the Landlord acknowledged that there were no written documents issued to the Tenant or other tenants regarding their bedroom occupation or tenancy and there were no condition inspection report forms, no notice of final opportunity to attend an inspection, despite the Tenant sharing common spaces with other tenants who were occupying the property under separate tenancy agreements. When asked how the tenants were to determine who held the responsibility to manage or clean common areas the Landlord stated that they had to work that out amongst themselves.

The Landlord later clarified that G had had an inspection report completed when she first moved in back in 2012, and that inspection did not involve the Tenant. The Landlord asserted that the rental unit had been completely painted in 2000 and again in 2012. He argued that the rental unit really needed to be painted again and he should

not have to pay the cost. He indicated that if he had access to the other tenants he would seek compensation from them but that at this time he only had contact with the Tenant so he was seeking to recover the full costs from him.

The Tenant disputed all of the items claimed by the Landlord and argued that the Landlord submitted incorrect information with respect to when other tenants occupied the rental unit and incorrect information as to who left furniture and articles behind. The Tenant admitted to leaving a dresser and some other small articles behind. He denied installing the mirror and argued that the house was furnished and the kitchen stocked prior to his moving into the rental unit. He submitted that the other tenants made the mess and not him.

The Tenant testified that he did perform some cleaning but that he focused the cleaning on his bedroom. He argued that he did not damage the walls and he should not have to pay for the Landlord to renovate the house. He pointed to the June 2014 email where the Landlord stated that he had arranged to renovate and paint the rental unit as soon as he moved out at the end of his tenancy August 1, 2014.

Analysis

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

In determining these disputes, in absence of a written tenancy agreement, I must first turn my mind to determining if a tenancy existed which would be governed by the *Residential Tenancy Act (the Act)* and if so, what type of tenancy it was.

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

It was undisputed that the Tenant rented a bedroom and had access to common areas that were shared with various other tenants. Each tenant entered into separate verbal

tenancy agreements with the Landlord to occupy individual bedrooms with access to common shared spaces located in the self-contained 3 bedroom rental suite.

The Residential Tenancy Branch Policy Guideline # 13 stipulates that **tenants in common** are tenants sharing the same premises or portion of premises as other tenants who entered into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as other tenants with a separate tenancy and is not responsible for debts or damages relating to the other tenant's or their tenancy.

Based on the above, and the undisputed evidence before me, I find the Tenant occupied the self-contained rental unit as a "tenant in common" with four other tenants in common, who moved in and out of the rental suite over the course of this Tenant's tenancy.

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.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the 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 and did whatever was reasonable to minimize the damage or loss.

Landlord's Application

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.

The Landlord has applied to recover all of his costs from this Tenant, as he does not have “access” to the other tenants, despite the tenants being tenants in common. The Landlord has relied primarily on his own written submissions and a witness statement from another tenant as evidence to support the condition the rental property was left in. I have not given any weight to the witness statement of the tenant from the other suite, as she did not attend the hearing to give testimony or be cross examined by the Tenant. The Tenant has a right to hear and confront the evidence against them first hand. Furthermore, while the witness may have seen the condition of the self-contained suite on August 4, 2014, that is not evidence that this Tenant was the cause of that condition, as there were four other tenants in common; and this Tenant had vacated the suite three days prior to the witness seeing the suite.

As noted above the Tenant occupied the property as a tenant in common with a total of four other tenants, moving in and out of two other bedrooms and sharing the common spaces during the duration of his tenancy. There were no written tenancy agreements and no written or posted rules about the use, care, and cleaning of common spaces. There was no evidence of regular inspections, notices, or warnings regarding uncleanliness.

When a landlord rents individual rooms to tenants under separate tenancy agreements, the burden lies with the Landlord to conduct inspections of all common areas and have each tenant sign the condition report form each time a tenant moves in or out.

In absence of a move in and move out condition inspection report I find there was insufficient documentary evidence to prove that this Tenant had been responsible for the furniture or debris that had been left behind, for installing a mirror, for any of the damages, painting, or cleaning that was required as of August 4, 2014. That being said the Tenant did acknowledge that he left a dresser and a few other articles behind that had to be discarded, after he cleaned his bedroom.
Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, vacant of debris, and undamaged except for reasonable wear and tear.

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.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the foregoing, I conclude that the Landlord is entitled to nominal damages in the amount of **$5.00**.

The Landlord has primarily failed with their application; therefore, I decline to award recovery of the filing fee

Tenant's Application

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations.

Section 35 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day.

If a landlord fails to complete either the move in or move out inspection report forms, section 24 of the *Act* stipulates that the right of a landlord to claim against a security deposit is extinguished and the deposit must be returned to the tenant.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended August 1, 2014 and the Landlord received the Tenants' forwarding address in writing on August 4, 2014. Therefore, the Landlord was required to return the Tenant's security deposit in full no later than August 19, 2014, as the Landlord's right to claim damages against the deposit had been extinguished. The Landlord did not return the security deposit; rather he filed an application for Dispute Resolution on December 8, 2014.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Accordingly, I award the Tenant the return of double his security deposit plus interest in the amount of **$500.00** (2 x $250.00 + $0.00 interest).

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable; and the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

In regards to the Tenant's claim for either the return of, or compensation for, his golf putter and pitching wedge, I conclude the Landlord's actions of removing the Tenant's possessions, refusing to return them and later discarding the Tenant's golf clubs, to be vexatious and an egregious breach of the *Act.*

In coming to the foregoing conclusion, I determined that the Landlord's actions were a breach of both section 28 and 29 of the *Act.* I did not accept the Landlord's submission that he had authority to remove and discard the Tenant's possessions because "he" determined them to be the possessions of J, a previous tenant, simply because they were located in the room that had previously been occupied by J. I made that conclusion based on the fact that the Landlord had inspected the bedroom occupied by J's on July 1, 2014, as previously scheduled and saw that it had been cleared of all of J's possessions and was in fact vacant.

There was undeniable evidence that the Tenant contacted the Landlord within a reasonable amount of time to inform the Landlord that those were his possessions that had been removed. Despite the Tenant going above and beyond normal actions to prove to the Landlord that the golf clubs where his possessions, the Landlord returned some of the Tenant's possessions and continued to take it upon himself to decide ownership of the golf clubs.

In determining that the Landlord's actions were vexatious, I considered the fact that the Landlord held onto the golf clubs until two weeks after he received the Tenant's application for Dispute Resolution seeking the return of his possessions, before donating them to a thrift shop.

Based on the above, I grant the Tenant's claim for monetary compensation in the amount of **$221.04.**

The Tenant has succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – I find that these applications meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenant's award ($500.00 + $221.04 + $50.00)	$ 771.04
LESS: Landlord's award ($5.00)	-5.00
Offset amount due to the Tenant	**$ 766.04**

Conclusion

The Tenant has been awarded a Monetary Order for **$766.04**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord 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: April 30, 2015

Residential Tenancy Branch