



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LESSARD HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant for damage to the rental unit, and other losses, authority to retain the security deposit and to recover the filing fee.

The hearing was conducted by teleconference on January 17, 2017. Both parties called into the hearing and 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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 Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord be entitled to recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the move in condition inspection which indicated the tenancy began June 30, 2015. The Tenants paid a security deposit in the amount of \$1,425.00, \$500.00 of which the Landlord continues to hold.

The tenancy ended on June 27, 2016. The Tenants provided their forwarding address on the move out condition inspection report on June 27, 2016. The Landlord applied for dispute resolution on July 14, 2016.

Introduced in evidence was a copy of the move out condition inspection report dated June 27, 2016. The Tenants confirmed their agreement that the report was accurate. On this document the following notations are provided:

- Carpet cleaning cost TBD;
- Leaky faucet in laundry room;
- Bylaw enforcement fine;
- Total items deducted from security deposit \$500.00

On the Application for Dispute Resolution filed July 14, 2016, the Landlord claimed the sum of \$3,000.00; in the details of dispute section the Landlord wrote: "There is water damage to the bathroom cabinet, and drawer." In email communication between the Landlord's agent and the Tenant the Landlord's agent confirms this figure was an estimate and they would adjust the amount claimed when more details are available.

On a Monetary Orders Worksheet dated December 30, 2016, the Landlord claimed the following:

Cost to replace cabinet	\$1,857.85
Bylaw infraction	\$500.00
Carpet cleaning	\$157.50
Filing fee	\$100.00
TOTAL	\$2,615.35

The Landlord's representative testified that the damage to the cabinet was not apparent during the move out condition inspection as the rental unit smelled of cleaning products. He stated that after the Tenants moved out the smell of the musty cabinet was very obvious.

The Landlord submitted copies of email communication wherein the Tenants confirm they did not have any issue with the cabinet or the faucet in the main bathroom.

The Landlord's representative submitted that the Landlord was fined \$500.00 because the Tenants put their garbage out too early. He stated that this was the second infraction and as a result they were fined \$500.00. The Landlord sought compensation from the Tenants for this amount.

The Landlord also confirmed that the Tenants failed to clean the carpets as required by the residential tenancy act. The Landlord sought the sum of \$157.50 for the cost to clean the carpets and provided an invoice in evidence to support this claim.

In reply, the Tenants confirmed that they oppose the Landlord's claim for compensation for the cost to replace the counter as they submit they were unaware of any water issues. The Tenants also submit that the water damage to the counter was not visible at the time of the inspection as noted on the move out condition inspection report. Further, they note that on the move *in* condition inspection the following was noted on the bathroom "counter needs adjusting", such that the Tenants suspect this was an issue which predated their tenancy and was simply not visible to them.

The Tenants oppose paying anything towards the \$500.00 fine for putting their garbage out too early. The Tenants submit that the Landlord failed to inform them that a letter and Bylaw Enforcement Notice had previously been sent to the Landlord at the Landlord's residential address such that a fine was levied on the 2nd infraction. The claim that had they known of the first infraction they would not have put their garbage out early.

The Tenants also submit that as the carpets were not professionally cleaned before they moved in, they should not be expected to professionally clean the carpets at the end of the tenancy.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 of the *Act* as follows:

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

After careful consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I accept the Tenants' evidence that they were unaware of the water leak in the bathroom counter. It appears that this was not noticeable to the Tenants or the Landlord's representative on move out. Further, based on the move in condition inspection report, I find it likely that any issue with the counter predated the tenancy. In all the circumstances I find the Landlord has failed to prove that the Tenants caused

damage to the counter through their actions or neglect. Consequently, the Landlord's claim for monetary compensation for the cost to replace the counter is dismissed.

The Tenants submit that they should not be responsible for paying the Bylaw Enforcement Notice received June 14, 2016 as a result of putting their garbage out early. They further submit that the Landlord failed to inform them that a previous notice had been issued.

The Landlord's representative stated that the Tenants would have received notice from the City workers on the dates they were in violation of the applicable bylaw, and that in any case, it was their responsibility to observe the permitted hours. Finally, the Landlord's representative stated that the City does not have to give a warning and can issue the fine on the first infraction. I was not provided any evidence from the Tenants to dispute this claim.

The \$500.00 fine was levied because the Tenants failed to observe the permitted hours for putting out their garbage. I find the Tenants are responsible for compensating the Landlord the **\$500.00** claimed for the cost of the Bylaw Enforcement Notice received June 14, 2016.

Residential Tenancy Policy Guideline 1 provides that Tenants are required to clean the carpets at the end of a tenancy; this obligation exists whether the carpets were cleaned when they moved in or not. In addition, Clause W.(i) of the Residential Tenancy Agreement provides as follows:

- i. **Carpets** – Upon termination the tenant agrees to have the Carpet professionally cleaned at their expense if proof cannot be provided the tenant agrees to have the landlord hire a professional carpet cleaning and deduct the expense from their security deposit.

I therefore award the Landlord compensation for the cost to clean the carpets in the amount of **\$157.50**.

As the Landlord has been partially successful, I award them recovery of one half of the filing fee in the amount of **\$50.00**.

The Landlord is entitled to the sum of \$707.50 for the following:

Bylaw infraction	\$500.00
Carpet cleaning	\$157.50
Filing fee	\$50.00
TOTAL	\$707.50

The parties agreed the Landlord continues to hold \$500.00 of the Tenants' security deposit. Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlord to retain the security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$207.50**. This Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$707.50 for the cost of the bylaw infraction, carpet cleaning and recovery of one half of the filing fee. The Landlord may retain the Tenants' \$500.00 security deposit and is granted a Monetary Order in the amount of **\$207.50** for the balance due.

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: February 14, 2017

Residential Tenancy Branch