



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing convened as a result of the Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenant, authority to retain her security deposit and to recover the filing fee.

Only the Landlord R.S. called into the hearing which was conducted by teleconference on March 15, 2017 at 1:30 p.m. He gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

R.S. testified that they served the Tenant with the Notice of Hearing and the Application on September 21, 2016 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12: Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 26, 2016 and I proceeded with the hearing in his absence.

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 Landlords' 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. Are the Landlords entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Tenant recover the filing fee?

Background and Evidence

R.S. testified as follows.

The tenancy began November 1, 1999. He stated that the Landlords purchased the rental property November 16, 2015 at which time the tenancy agreement was "carried over" from the prior owner. R.S. confirmed that at the start of the tenancy monthly rent was payable in the amount of \$1,700.00 and the Tenant paid a security deposit in the amount of \$600.00.

R.S. testified that the security deposit has accrued \$55.15 in interest since November 1, 1999 such that as of the date of the hearing the Landlord holds the sum of \$655.15 as the Tenant's security deposit and interest.

R.S. stated that the tenancy ended pursuant to a 2 month Notice to End Tenancy for Landlord's Use which had an effective date of August 31, 2016.

The Tenant provided his forwarding address in writing on the move out condition inspection report (a copy of which was provided in evidence).

The Landlords applied for dispute resolution on September 14, 2016.

In the within hearing, the Landlords requested the sum of \$1,130.74 in compensation for the following:

Replacement of a bi-fold door	\$70.52.
Repairs and repainting of bedroom walls	\$375.00
Repairs to the washing machine and dryer	\$685.22
TOTAL	\$1,130.74

R.S. testified that the building was constructed in 1994.

Introduced in evidence was a photo of a bi-fold door confirming that it was broken at the end of the tenancy. R.S. stated that the Tenant obviously knew they had broken the door, as they purchased a replacement door (which was left in the rental unit), but it was incorrectly sized and would not fit. R.S. confirmed that he was not able to provide evidence as to the age of the bi-fold door, although he estimated it had been replaced at some point during the tenancy. The Landlords provided a copy of a receipt for the purchase of the replacement door.

The Landlords also claimed \$375.00 for the estimated cost to repair and repaint two bedrooms in the rental unit. In support the Landlords provided photos of the walls showing that the paint was incomplete, did not match, and was improperly trimmed.

R.S. stated that it was his information that the Tenant painted the rental unit. He stated that he was unsure if the Tenant had permission from the previous Landlord to paint. The Landlord also stated that when he inspected the rental unit for the purpose of purchasing the property, he did not see the paint issues due to furniture placement. He stated that he was not aware when the rental unit had last been painted by the Landlord.

R.S. confirmed he was only claiming the cost of materials for repairs and painting to the main and second bedroom.

The Landlords also claimed the cost of repairs to the washing machine and dryer. R.S. stated that he was informed that the washer and dryer were purchased in August 2010. He further stated that there was significant damage to the units at the end of the tenancy as the drain was clogged with several inches of stagnant water. Photo #4 submitted by the Landlords depicts coins, hair pins, elastics, safety pins which R.S. stated were found in the washing machine drain. The Landlord submitted that this indicated the Tenant had not operated the washing machine properly for some time. He also stated that the rubber band was wrapped around the impeller.

The total amount claimed by the Landlord for repairs to the washing machine and dryer were \$685.22. He confirmed that he did the work himself and did not claim the costs for his labour. He also confirmed that he did look into the cost to replace the washer and dryer but stated that when new the units were \$1,300.00 and the current cost would be \$2,000.00.

The Landlord also claimed the cost of the filing fee in the amount of \$100.00.

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 Landlords have 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.

Based on the undisputed evidence before me, the submissions of the Landlords and on a balance of probabilities I find as follows.

I find the Landlords are entitled to compensation for the cost to replace the bi-fold door in the amount of **\$70.52**. The photos submitted by the Landlords clearly show the door as being damaged beyond normal wear and tear. I accept R.S.'s testimony that the Tenant had purchased a replacement door which indicates he was aware of his responsibility in this regard. I also accept R.S.'s testimony that the door was replaced during the tenancy such that I do not discount the amount claimed.

I dismiss the Landlords' claim for painting and repair of the rental unit. Although the pictures of the rental unit indicate painting was required at the end of the tenancy, this was a significantly long term tenancy of 17 years. The Landlords were not able to provide evidence as to the when the rental unit had last been painted or the age of the interior paint.

Residential Tenancy Branch Policy Guideline 40: Useful Life of Building Elements provides as follows.

...When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

...

The *Guideline* further provides that interior paint has a useful life of four years. As I am unable to determine when the rental unit was last painted, I find it likely that painting would have been required at the end of this long term tenancy in any case.

I accept the Landlords' undisputed evidence that the washing machine was damaged at the end of the tenancy beyond normal wear and tear. I further accept their evidence that the cost to replace the washing machine was more than the cost to repair and that by repairing the machine himself, R.S. mitigated the Landlord's loss. While the amount claimed is high, R.S. stated that the problem with the machine was not immediately apparent and that after several attempts the machine was fixed at a cost of \$685.22. I

find this to be reasonable and therefore award the Landlord's compensation in this amount.

The Landlords, having been substantially successful are also awarded recover of the \$100.00 filing fee for a total of **\$855.74** calculated as follows:

Replacement of a bi-fold door	\$70.52.
Repairs to the washing machine and dryer	\$685.22
Filing fee	\$100.00
TOTAL	\$855.74

Conclusion

The Landlords are granted \$855.74 for compensation for replacement of a broken bi-fold door, the cost to repair the clothes washing machine and recovery of the filing fee. The Landlords are authorized to retain the Tenant's \$655.15 security deposit and accrued interest and are granted a Monetary Order for the balance due in the amount of **\$200.59**. This Order must be served on the Tenant and may be filed and enforce in the B.C. Provincial Court (Small Claims Division) 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: March 17, 2017

Residential Tenancy Branch