



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF (Landlord's Application)
 MNSD, FF (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution filed October 13, 2016, the Landlord requested monetary compensation for damage to the rental unit, authority to retain the Tenants' security deposit and to recover the filing fee. In the Tenants' Application for Dispute Resolution filed November 11, 2016, the Tenants requested return of their security deposit and to recover the filing fee.

The hearing was conducted by teleconference on April 22, 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 either party recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began June 1, 2016; monthly rent was payable in the amount of \$1,300.00 and the Tenants paid a security deposit in the amount of \$660.00.

The Landlord stated that a move in condition inspection report was completed on May 28, 2016.

The Landlord stated that the tenancy ended on September 30, 2016.

The Landlord stated that she emailed the Tenants and offered September 28, 2016 as a date for the move out inspection. These emails were provided in evidence and confirm that the Landlord refused to conduct the inspection with the Tenant S.C. She testified that her reasons were as a result of safety concerns she had with S.C. She stated that S.C. was hitting and screaming at their daughter, and the Landlord was worried about retaliation as the Tenants were aware the Landlord had called child services. She further stated that all dealings she had regarding the tenancy were with P.C. and that S.C. did not attend the move in inspection. She also stated that S.C. did not speak English.

The Landlord also testified that they had recently had an arbitration as she had issued a notice to end tenancy, and this also caused her concerns as to how S.C. would react.

The Landlord testified that she served the Notice of Final Opportunity to schedule an Inspection by email. The Tenant acknowledged receipt of this document, although he informed the Landlord this was not a proper way to serve a document.

The Landlord included the move out condition inspection report, photos of the rental unit taken at the end of the tenancy and after the deficiencies were corrected, as well as receipts for expenses incurred.

The photos provided by the Landlord showed windows sills which had not been cleaned, mismatched paint, paint on the wall trim, a stain on the tile, and an unclean shower.

In total the Landlord sought the sum of \$660.00 for the following:

Professional maid service	\$273.00
Replace light bulbs	\$20.00
Paint	\$100.00

Labour	\$160.00
Shower	\$107.00
TOTAL	\$660.00

P.C. testified on behalf of the Tenants.

He stated that it is the Tenants' position that the Landlord failed to follow the correct procedure regarding the move out condition inspection. He stated that the Landlord confirmed September 28, 2016 at 6:00 p.m. as the time for the move out inspection. He testified that he and his wife attended at 6:00 p.m. He stated that they arrived half an hour early and then watched the Landlord walk up the drive and into the house. He stated that they waited another half an hour, until 6:30 p.m., and she never came back out. He also confirmed that the Landlord knew he was there, as he spoke directly with her; she asked if he was there alone to which he responded that he was there with his wife.

He further stated that it was his wife who originally spoke to the Landlord and accepted the contract and that he simply did all the paperwork. He said that although his wife speaks and understands English, she doesn't read English, particularly legal documents, very well, and as such he was dealing with the legal aspects. He also stated that his wife did all the cleaning and she needed to go through the house with the Landlord as she wanted to know if anything further needed to be cleaned.

In response to the Landlord's monetary claims, P.C. testified as follows.

He stated that the rental unit was cleaned prior to moving out, and submitted that the amount claimed by the Landlord was excessive. He stated that he moved out the middle of September, although he was not sure of the exact date.

The Tenants also provided photos in evidence of the rental unit.

He also stated that to his knowledge the light bulbs were not burned out.

Further, he claimed that he believed that the rental unit looked the same as when they moved in and therefore he does not understand why she needed to paint the walls, and suggested that she may have wanted to do upgrades for the next tenants.

In terms of the Landlord's claim regarding the shower, the Tenant stated that the shower door did not stay closed and as such they tried to seal it so the door would close properly.

In reply to the Tenants' response, the Landlord confirmed that the rental unit was remodelled seven years prior to the tenancy beginning and as such the paint was seven years old. She confirmed that she did not repaint the walls when this tenancy began as the previous tenant traveled a lot for work and therefore wasn't in the rental unit very often. She further submitted that had he been concerned with the condition, he would have indicated as such at the beginning of the tenancy and noted it on the move in condition inspection report.

The Landlord also reiterated that all her dealings were with the Tenant, not his wife.

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 her 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

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

The photos submitted by the parties show the rental unit required some minor cleaning. The receipt submitted by the Landlord does not provide details as to the amount of time required or the areas which were cleaned. I therefore award the Landlord a nominal sum of **\$150.00** for cleaning.

The Landlord claimed \$20.00 as the cost to replace the light bulbs. The invoice for labour provided in evidence includes a 2.5 hour charge for replacing light bulbs, removing lights switch covers and applying painter's tape; this amount is not broken down, nor does it provide details as to how many light bulbs were burned out. The Tenants dispute this amount and testified that the lights were not burned out when they moved out of the rental unit. I am unable, based on the testimony of the parties, to reconcile their conflicting testimony and I therefore find the Landlord has failed to prove this claim.

Residential Tenancy Policy Guideline 40 provides that paint has a useful life of four years. The Landlord testified that the rental unit had been remodelled seven years prior to the tenancy beginning. I find that the rental unit was due for painting in any case and I therefore deny the Landlord compensation for the cost to repaint the unit.

The invoice provided by the Landlord for labour relates to painting and preparation. For the same reasons as noted above, I dismiss the Landlord's claim for compensation.

I find the Landlord failed to follow the *Residential Tenancy Act* and *Residential Tenancy Regulation* with respect to the move out condition inspection. I accept the Tenant's

evidence that they attended the rental unit for the purposes of the inspection at the date and time proposed by the Landlord.

Section 35 of the *Act* reads as follows:

Condition inspection: end of tenancy

35 (1) The landlord and tenant *together must* inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

[emphasis added]

I find the Landlord breached section 35 by refusing to inspect the rental unit with the female Tenant. Had the Landlord been concerned about conducting the inspection with the female Tenant, she could have had an agent inspect the unit on her behalf.

I therefore find the Landlord has extinguished her right to claim against the security deposit pursuant to section 36.

Conclusion

The Tenants are entitled to return of their \$660.00 deposit. As they have been substantially successful, they are also entitled to recovery of the \$100.00 filing fee for a total of **\$760.00**.

The \$150.00 awarded to the Landlord for cleaning is to be offset against this amount such that the Tenants are entitled to a Monetary Order in the amount of **\$610.00**. This Order must be served on the Landlord and may be filed and enforced 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: April 28, 2017

Residential Tenancy Branch

