



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENNINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MRN, MND, MNDC, MNSD, O, FF

Introduction

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

The hearing was conducted by teleconference on June 20, 2017. Only the Landlord's agent, C.L., called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

C.L. testified that she served the Tenant with the Notice of Hearing and the Application on December 23, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 December 28, 2016 and I proceeded with the hearing in their 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 Landlord's 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 Tenant?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began April 11, 2011. C.L. confirmed that the Tenant signed serial fixed term tenancies, the most recent of which was provided in evidence. Pursuant to the most recent tenancy agreement, monthly rent was payable in the amount of \$1,100.00 (payable on the first of the month) and the Tenant paid a security deposit in the amount of \$550.00.

C.L. testified that the Tenant vacated the rental unit November 30, 2016. C.L. confirmed that they were no longer seeking loss of rent for the unit as they no longer manage the rental unit on behalf of the property owner. Pursuant to section 64(3)(c), I amend the Landlord's application to remove this request.

In the within action the Landlord sought compensation for the following:

Cleaning and repair supplies	\$52.12
Painting	\$525.00
Painting supplies	\$389.07
Cleaning	\$157.50
Replacement of the carpets	\$1,583.93
Replacement light fixtures	\$260.74
Parking pass replacement	\$50.00
TOTAL	\$3,048.18

C.L. testified that the tenancy ended as the Tenant smoked in the rental unit and was evicted for cause. C.L. confirmed that the majority of the Landlord's claim related to the damage caused by the Tenant's excessive smoking in the rental unit. She confirmed that the Tenant also removed a portion of the carpet requiring its replacement.

C.L. stated that the rental unit was so smoke damaged that painting was also required.

In support of their claim the Landlord submitted photos of the rental unit confirming the condition and the significant staining caused by the Tenant's smoking. The photos also suggest the Tenant failed to clean the rental unit.

Also introduced in evidence was a comprehensive Move In-Move Out Condition Inspection Report confirming the condition of the rental unit.

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.

I accept the Landlord's evidence that the rental unit required cleaning and repairs at the end of the tenancy due to the condition it was left in by the Tenant, and more particularly, due to the damage caused by her smoking in the rental unit. The photos submitted in evidence by the Landlord support this claim and suggest the Tenant did minimal cleaning at the end of the tenancy.

Pursuant to section 21 of the *Residential Tenancy Regulation*, condition inspection reports are afforded significant evidentiary weight. For greater clarity I reproduce that section as follows:

- 21** 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 submitted a detailed report confirming the condition of the rental at the time the tenancy began and ended. Additionally, I note that the Tenant's family member (who attended

the inspection on her behalf) confirmed his agreement on the move out report that the report fairly represented the condition of the rental unit.

While the report speaks for itself I note that in general, the Move out Condition Inspection Report indicates the rental unit required cleaning and repairs due to the Tenant's smoking. In PART V—MOVE-OUT INSPECTION the following hand written notes were added to the report:

- Unit smoked in heavy
- Nicotine odor and damages
- Fix carpet in bedroom & closet, missing piece
- Cleaning needed to make unit ready
- Unit needs painting from nicotine stains
- Fix gouges
- Doors yellow with nicotine
- Clean or replace nicotine stained blinds as well as all window frames and fireplace

I find, based on the above, and on a balance of probabilities, that the Landlord is entitled to recovery of the amounts claimed for cleaning.

I also accept the Landlord's agent's testimony, as well as the photographic evidence provided, that due to the Tenant smoking in the rental unit the rental unit required painting and new carpets. I therefore award the Landlord recovery of the amounts claimed.

In addition to the notations on the move out condition inspection report, photos submitted by the Landlord confirm that at the end of the tenancy some of the light fixtures were missing. I therefore award the Landlord the amounts claimed to replace the light fixtures.

I accept the Landlord's evidence that the Tenant failed to return the parking pass and therefore award them the amount claimed.

As the Landlord has been substantially successful, I also award them recovery of the filing fee.

In total I award the Landlord the sum of **\$3,148.18** for the following:

Cleaning and repair supplies	\$52.12
Painting	\$525.00
Painting supplies	\$389.07
Cleaning	\$157.50
Replacement of the carpets	\$1,583.93
Replacement light fixtures	\$260.74
Parking pass replacement	\$50.00
Filing fee	\$100.00
TOTAL	\$3,148.18

Conclusion

The Landlord is granted monetary compensation in the amount of **\$3,148.18** for cleaning and repairs to the rental unit as well as replacement of the parking pass and recovery of the filing fee.

Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I grant the Landlord authorization to retain the Tenant's **\$550.00** security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,598.18**. The Landlord must serve the Monetary Order on the Tenant and may file and enforce it 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: June 29, 2017

Residential Tenancy Branch