



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

The hearing was conducted by teleconference on November 30, 2017. Initially only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me. At 1:40 p.m. the Tenant called into the hearing. After the Landlord completed her testimony, the Tenant also gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

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 parties' 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 retain the Tenant's security and pet damage deposit as compensation for damage to the rental unit?
2. 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 December 15, 2014. The Tenant paid a \$1,300.00 security deposit and a \$1,300.00 pet damage deposit for a total of \$2,600.00 in deposits paid.

The Landlord testified that the tenancy ended May 2017 such that the tenancy was approximately 2.5 years long.

In the within hearing the Landlord sought to retain the deposits in the amount of \$2,600.00.

The Landlord claimed that the stove was gouged and burned by the Tenant during the tenancy. Photos submitted by the Landlord show this damage.

The Landlord claimed that the shelf on the door of the refrigerator was not replaceable such that she replaced the entire refrigerator. She submitted in evidence photos of the refrigerator door.

The Landlord also stated that the countertop was stained and/or burned by the Tenant during the tenancy. Photos submitted by the Landlord confirm this. She stated that she received an estimate regarding possible repair, but was worried that it may not be possible as plane-ing of the wood may result in the wood delaminating.

The Landlord also stated that she had the carpets replaced as they could not be cleaned due to the excessive pet urine in the carpets. She also confirmed that the carpet was "sisal" such that it could not washed with water as it would not maintain its shape.

The Landlord testified that the carpets, the countertop, the stove top, and the refrigerator were 14 years old at the time the tenancy ended. She stated that the walls had been freshly painted at the time the tenancy began such that the paint was approximately 1.5 years old.

The Landlord submitted a move out condition inspection report confirming the above claims.

In response to the Landlord's claims the Tenant testified as follows.

The Tenant stated that her pets did not damage the carpet. She confirmed that her foster dog did urinate on the carpet, but she claimed she cleaned the carpet with a carpet cleaner. She also stated that when she moved in she told the Landlord she was concerned about living there as she had pets and the unit was carpeted. She stated that the Landlord informed her that she intended to remove the carpets and not to worry about it.

The Tenant stated that when she moved in, the Landlord showed the Tenant that there was pre-existing damage to the countertop. The Tenant stated that the wood absorbed liquid rapidly such that she suspected it was not properly sealed. She further stated that she oiled the counters herself. The Tenant also noted that the move in condition inspection report indicated that the "butcher block is worn".

In response to the Landlord's claim for compensation for the stove, the Tenant stated that she did not know what the Landlord was talking about, and that she did not damage it.

The Tenant confirmed during the hearing that she did not look at the Landlord's evidence as she had received aggressive communication from the Landlord and feared the evidence would contain similar communication.

The Tenant stated that the duct tape on the fridge was there when she moved in. She stated that she had no idea how the exterior of the fridge would be dented.

In response to the Landlord's claim for painting, the Tenant stated that she was told that everything was going to be ripped up and not to worry about it. She stated that she did not notice any scratches on the walls when she moved out.

The Tenant further stated that she was informed at the beginning of her tenancy that the Landlord intended to move back into the rental unit and would be doing significant renovations before she moved back in.

The Tenant stated that the Landlord was very amicable at the beginning and did not think for a moment that she needed to take photos of the inside of the fridge or the countertop as the Landlord was extremely friendly.

The Tenant confirmed that she did not participate in the move out inspection. She stated that she received four offensive emails from the Landlord and felt fearful of the Landlord.

In reply to the Tenant's submissions, the Landlord stated that on three occasions she suggested that they meet to inspect the property. She also served, by email, the Notice of Final Opportunity to Schedule a Condition Inspection.

The Landlord stated that she sent an email to the Tenant asking to complete the inspection to which the Tenant responded “you are terrifying me”. The Landlord stated that at that point she broke off communication.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept the Landlord's evidence that the Tenant failed to repair the rental unit as required by the above.

The evidence confirms that the Landlord complied with the *Residential Tenancy Act*, and the *Residential Tenancy Regulation* in terms of the move out condition inspection report. The evidence further confirms that the Tenant refused to participate in the move out condition inspection. The Tenant could have appointed an agent, or a friend, to participate in the move out inspection to ensure she satisfied the requirement to attend; yet she did neither. Similarly, the Tenant refused to review the Landlord's evidence in support of her claim such that the Tenant did not have compelling evidence to contradict the Landlord's submissions.

Section 21 of the *Regulation* provides as follows:

Evidentiary weight of a condition inspection report

- 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 Tenant failed to provide evidence to refute the move out condition inspection report and therefore has failed to provide evidence which contradicts the report. I therefore find the report accurately describes the state of repair and condition of the rental unit as of the date the tenancy ended.

The Landlord confirmed that the countertop, carpets, stove and refrigerator were 14 years old at the time the tenancy ended. She also testified that the paint in the rental unit was 1.5 years when the Tenant vacated.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides in part 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.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Accordingly, I discount the Landlord's claim for replacement of the following building elements as follows.

The Landlord claimed compensation in the amount of \$1,500.00 for the carpet. She testified that the carpet was 14 years old at the time the tenancy ended. *Policy Guideline 40* provides that carpet has a useful life of 10 years. Accordingly, I find the carpet had reached its useful building life and dismiss the Landlord's claim for related compensation.

The Landlord claimed compensation in the amount of \$2,000.00 for the countertop. She testified that the countertop was 14 years old at the time the tenancy ended. *Policy Guideline 40* provides that countertops have a useful life of 25 years. Accordingly, I discount the Landlord's claim of \$2,000.00 by 60% and award her **\$800.00**.

The Landlord claimed compensation in the amount of \$1,300.00 for the stove top. She testified that the stove was 14 years old at the time the tenancy ended. *Policy Guideline 40* provides that a stove has a useful life of 15 years. Accordingly, I discount the Landlord's claim of \$1,300.00 by 93% and award her **\$91.00**.

The Landlord claimed compensation in the amount of \$1,498.00 for the refrigerator. She testified that the refrigerator was 14 years old at the time the tenancy ended. *Policy Guideline 40* provides that refrigerator has a useful life of 15 years. Accordingly, I discount the Landlord's claim of \$1,498.00 by 93% and award her **\$104.86**.

The Landlord claimed total compensation in the amount of \$1,513.43 for wall repair and painting. She testified that the rental unit had been repainted shortly before the tenancy began such that it was 2.5 years old at the time the tenancy ended. *Policy Guideline 40* provides that interior paint has a useful life of 4 years. Accordingly, I discount the Landlord's claim of \$1,513.43 by 62.5% and award her **\$567.54**.

As the Landlord has been substantially successful I award her **\$100.00** as compensation for the filing fee.

Conclusion

The Landlord is entitled to compensation in the amount of **\$1,663.40** for the following:

adjusted cost to replace countertop	\$800.00
-------------------------------------	----------

adjusted cost to replace stovetop	\$91.00
adjusted cost to replace refrigerator	\$104.86
adjusted cost to repair and repaint rental unit	\$567.54
filing fee	\$100.00
TOTAL AWARDED	\$1,663.40

I authorize the Landlord to retain \$1,663.40 of the Tenant's \$2,600.00 in deposits and I grant the Tenant return of the balance in the amount of \$936.60. In furtherance of this award, the Tenant is granted a Monetary Order in the amount of **\$936.60**. This Order must be served on the Landlord 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: December 29, 2017

Residential Tenancy Branch