



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought monetary compensation in the amount of \$3,936.25 for damage to the rental unit, authority to retain the Tenant's security and pet damage deposit and recovery of the filing fee.

The hearing was conducted by teleconference on January 10, 2018. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he served the Tenants with the Notice of Hearing and the Application on July 17, 2017 by registered mail to the forwarding address provided by the Tenants on the move out condition inspection report. The Landlord confirmed that the packages were returned as undeliverable. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.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 Tenants were was duly served as of July 22, 2017 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 *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant'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 Tenants for damage to the rental unit?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

Introduced in evidence was a copy of the written tenancy agreement confirming this tenancy began November 1, 2011. Initially rent was payable in the amount of \$1,380.00 and the Tenant paid a security deposit of \$690.00 and a pet damage deposit in the amount of \$690.00.

The Landlord filed in evidence a copy of the Move in and Move-Out Condition Inspection Report (dated October 31, 2011 and June 1, 2017 respectively). On the -Move Out Report the Tenant, C.R., confirmed she agreed the report fairly represented the condition of the rental unit at the end of the tenancy; further she noted her agreement to the Landlord retaining both the security deposit and pet damage deposit.

The Landlord also filed a Monetary Orders Worksheet indicating they sought compensation for the following:

interior repairs to flooring, walls, ceiling, patio lock, sink cabinet floor and blinds	\$3,386.25
cleaning	\$500.00
replacement of visitor parking pass	\$50.00
TOTAL CLAIMED	\$3,936.25

The Landlord testified that just prior to the tenancy beginning all the carpet and laminate flooring was replaced; he stated that when the tenancy ended the flooring was totally ruined.

Analysis

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

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.

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 rental unit was left damaged and unclean at the end of the tenancy. The move out condition inspection report details the extent of the damage to the rental unit and this report is to be given significant evidentiary weight pursuant to section 21 of the *Residential Tenancy Branch Regulation* which 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.

Notably, the Tenant C.R. also confirmed her agreement that the report was a fair representation of the condition of the rental unit. The report also indicated that the Tenant was to pay the \$50.00 cost of replacing the visitor parking pass.

I accept the Landlord's undisputed evidence as to the cost involved in cleaning and repairing the rental unit and I therefore award him recover of the amounts claimed. As he has been successful, I also award him recovery of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$4,036.25 for the following:

interior repairs to flooring, walls, ceiling, patio lock, sink cabinet floor and blinds	\$3,386.25
cleaning	\$500.00
replacement of visitor parking pass	\$50.00
filing fee	\$100.00
TOTAL AWARDED	\$4,036.25

I authorize the Landlord to retain the Tenants' security and pet damage deposit in the amount of \$1,380.00 and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,656.25**. This Order must be served on the Tenants 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: January 10, 2018

Residential Tenancy Branch