



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed September 22, 2017, wherein she sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on April 24, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to 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 *Residential Tenancy Branch 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 the Landlord recover the filing fee paid for her Application?

Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed that this one year fixed term tenancy began September 1, 2016. Monthly rent was payable in the amount of \$2,600.00 and the Tenants were responsible for paying for heat, hydro and water utilities. The Tenants also paid a security deposit of \$1,300.00.

The Landlord testified that the Tenants moved from the rental unit on August 31, 2017. She claimed that she asked the Tenants to perform a move out condition inspection report and was not able to schedule one with them.

The Landlord also stated that the Tenants did not provide her with a forwarding address at the time the tenancy ended and as a result she sent her Application for Dispute Resolution to the address they provided when the tenancy began.

In the within hearing the Landlord sought the sum of \$1,495.05 for the following:

Outstanding hydro and water utility	\$188.50
14 hours of cleaning at \$20.00 per hour	\$280.00
Replacement of refrigerator crisper (\$85.00) in addition to shipping and handling (\$250.00)	\$110.00
Cost to remove Tenants' belongings	\$240.00
Cost to replace lock	\$24.05
Steam cleaning of the carpets	\$472.50
Landlord's husband's work time missed due to cleaning and repairs	\$80.00
Cleaning of oil spills in driveway	\$100.00
TOTAL CLAIMED	\$1,495.05

In support of her claim the Landlord provided photos of the rental unit as well as confirmation of payment of the amounts claimed.

Clause 15 of the addendum to the tenancy agreement requires the Tenants to shampoo the carpets at the end of the tenancy. The Landlord provided in evidence a copy of the cheque she used to pay the \$472.50 charge for cleaning the carpets.

The Landlord also submitted photos of the rental unit which showed numerous belongings left behind by the Tenants as well as a general lack of cleaning. These photos suggest the Tenants did minimal cleaning when vacating the unit; for instance the photos show food in the microwave, refrigerator and cupboards, and it was evident the microwave, refrigerator and oven were not cleaned.

In an email sent to the Tenants by the Landlord, she further writes that there were maggots in the kitchen drawers and under the sink.

The Tenant A.M. responded to the Landlord's claims as follows.

A.M. stated that the Tenants are agreeable to compensating the Landlord for the cost of the unpaid utilities.

A.M. submitted that the Landlord's claim for cleaning is exaggerated. She further stated that she did not refuse to do a move out inspection; rather the Landlord did not provide her with an opportunity for a walk through inspection.

A.M. stated that she was away from August 15, 2017 to August 30, 2017. She further stated that she tried to clean the rental unit on August 30, 2017 when she returned.

A.M. stated that she received an email from the Landlord proposing the evening of August 31, 2017 as the date to do the inspection. A.M. agreed to this date and proposed 7:00 p.m. She stated that she waited until 7:25 and when the Landlord did not arrive she left.

Copies of the emails between the parties were provided in evidence and which suggest that the Landlord communicated that she was not able to do the move out condition inspection as the Tenant, R. and Z. had yet to move all of their items out. Notably, A.M. testified that when she was at the property at 7:25 p.m. there were items left behind.

A.M. further stated that to her knowledge the Landlord did not issue a *Notice of Final Opportunity for a Condition Inspection*, although the Landlord did send an email proposing a second time.

R.R. also testified on behalf of the Tenants. He confirmed that the Tenants agreed that the Landlord was entitled to \$188.50 for unpaid utilities.

R.R. stated that the Tenants disagreed with the Landlord's claim for \$280.00 for cleaning as they believed that it was "high". He submitted, based on the photos provided, that it would not take 14 hours to clean; rather he believed a more reasonable estimate would be four hours.

R.R. also stated that the Tenants dispute the Landlord's claim for compensation for the cost to remove items. He claimed that the Landlord's husband gave them permission to leave some garbage neatly at the back door because they had "maxed out" the garbage and recycling. He further stated that had they not received permission to leave them, they would have made arrangements to remove them. In terms of the Landlord's claim

for compensation in the amount of \$240.00 for removing these items R.R. submitted that a more reasonable sum would be \$50.00. He also noted that both of the couches were removed by people passing by as they were left on the front lawn.

R.R. also noted that the Landlord is seeking compensation to remove items such as 2 televisions and a couch which were there during the tenancy and were in fact property of the Landlord. As well in terms of the Landlord's claim to remove wood which she claimed was left behind, R.R. stated that he believed this wood was from a greenhouse which was, again, at the residence when they moved in.

In terms of the Landlord's claim for the cost to replace the crisper R.R. stated that to his knowledge the crisper was left on a shelf.

In response to the Landlord's claim regarding the lock replacement, R.R. stated that the keys were left under the mat and they informed the Landlord's husband of this when they talked to him that evening; as such they opposed the Landlord's claim in this regard.

R.R. confirmed that the carpets were not cleaned at the end of the tenancy. R.R. further stated that the Landlord did not provide a professional receipt and the Tenants believe that the amount claimed is "unreasonably high".

R.R. further stated that the claim for \$80.00 for cleaning the "oil spills" in the driveway was exaggerated; he claimed that they used cat litter to absorb the oil drops which were barely noticeable at the end of the tenancy.

In terms of the move out condition inspection R.R. stated that they spoke with the Landlord's husband regarding this inspection; he also claimed that they were waiting for the Landlord to attend on the 31st and when she did not come they left late in the evening, likely at 11:30 p.m.

In reply to the Tenants' submissions the Landlord confirmed that of the items left behind, a hide-a-bed and two TVs were hers; she noted that they remain in the rental unit presently. The Landlord denied the Tenants' claim that the wood was hers, and reiterated her testimony that was the property of the Tenants as well as other items left in the garage and outside areas.

The Landlord stated that she did not provide a copy of the invoice for the carpet cleaning although she did provide a copy of the cheque she used to pay for it and she confirmed that the amount paid was to clean the carpet in the rental unit only.

The Landlord repeated that the crisper was missing and was not on a shelf as claimed by the Tenants.

The Landlord further stated they were using her driveway as a workshop to fix cars and boats and that was why there was oil on the driveway.

Analysis

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.

The Tenants agree the Landlord is to be compensated for the **\$188.50** outstanding for the electrical and water utility. As such, I record the parties' agreement pursuant to section 63 of the *Residential Tenancy Act*, and award the Landlord the amount claimed.

I find, based on the Landlord's testimony and evidence, particularly the photos of the rental unit, that the Tenants breached their obligations under section 37 of the *Act*, by failing to clean the rental unit to a reasonable standard. The photos suggest the Tenants made minimal effort to clean the rental unit when vacating and I accept the Landlord's evidence that it took 14 hours to clean the unit. The kitchen appliances and cupboards were not emptied and clearly not cleaned or wiped down and that alone would have been time consuming to clean. I therefore award the Landlord the **\$280.00** claimed for cleaning.

I also accept the Landlord's evidence that the refrigerator crisper drawer was missing and the door was cracked. The photos submitted by the Landlord confirm this. I do not accept the Tenants' evidence that the drawer was in a shelf "somewhere". I therefore award the Landlord the **\$110.00** claim for replacement and shipping and handling.

I accept the Tenants' evidence that two of the sofas left behind were picked up by third parties passing by the home. I also accept the Landlord's evidence that her items which were there prior to the tenancy were not disposed of. I find, based on the photos of the rental unit provided by the Landlord that the Tenants left a considerable amount of other items including garbage. In doing so, the Tenants have breached section 37. I accept the Landlord's evidence that she spent **\$240.00** to have those items disposed of and I therefore award her the claimed amount.

The Landlord seeks the cost to replace a lock claiming the Tenants did not return the key. The Tenants allege they left a key under the mat when the tenancy ended and informed the Landlord's husband of this. Without some corroborating evidence I am unable, to reconcile the discrepancy in the parties' testimony and I therefore find the Landlord has not proven her claim in this regard.

The Landlord also seeks compensation for her husband's loss of earnings while cleaning and repairing the rental unit. She claims \$20.00 per hour, yet failed to provide any evidence to support this hourly rate, or details as to when her husband allegedly missed work. I therefore find she has failed to prove her claim for this amount.

The Landlord also sought monetary compensation for the cost to clean oil spills in the driveway. The Tenants testified that these spills were cleaned before they left such that

they were barely noticeable. I was not provided with any photos of the driveway to show its condition and as such I find the Landlord has not proven her claim for related compensation.

Clause 15 of the addendum to the tenancy agreement requires the Tenants to shampoo the carpets at the end of the tenancy. The Landlord submitted proof of payment for carpet cleaning services and I accept her testimony that the amount paid was for the rental unit only. I therefore award her the **\$472.50** claimed.

The Landlord seeks an Order pursuant to sections 38 and 72 that she be permitted to retain the Tenant's security deposit towards the amounts claimed.

Both parties alleged the other failed to follow the *Act* and *Regulations* in terms of scheduling a condition inspection report.

While it is clear the Tenant, A.M., and the Landlord attempted to arrange a time to meet and perform the move out condition inspection report on August 31, 2017, the other Tenants had yet to clear their belongings from the rental unit such that an inspection was premature.

Section 35 provides as follows:

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.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Section 17 of the *Residential Tenancy Regulation* further provides that the landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form: *Notice of Final Opportunity to Schedule a Condition Inspection* on Form #RTB-22A.

The evidence before me confirms that the Landlord failed to provide the Tenants with a *Notice of Final Opportunity to Schedule a Condition Inspection* on Form #RTB-22A. This form alerts the Tenants to the possibility that the Landlord may perform the inspection in their absence. Additionally, section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the *Regulation* and the tenant has not participated in the inspection.

Section 36(2) provides that unless the tenant has abandoned the rental unit, the right of the landlord to claim against the deposits for damage to the residential property is extinguished if the landlord has not complied with the requirements of Section 35 of the *Act* and Section 17 of the *Regulation*; or does not participate in the inspection or having completed the inspection does not complete a Condition Inspection Report and give a copy to the tenant within 15 days after it is completed and the landlord receives the tenant's forwarding address.

I am satisfied that the Tenants did not give the Landlord a forwarding address when they vacated the rental unit.

While the Landlord failed to deliver the *Notice of Final Opportunity to Schedule a Condition Inspection* on Form #RTB-22A, I am satisfied that the condition the rental unit was left in such a condition that the Landlord might reasonably consider the items abandoned by the Tenants. I therefore make no finding as to whether either party extinguished their rights to claim the deposit.

In an email to the Landlord dated September 10, 2017, the Tenant J.B. reminds the Landlord of the requirement of the *Act* with respect to the return of their deposit. However, the Tenant failed to acknowledge that a forwarding address had not yet been provided.

Section 38(1) of the *Act* provides that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Although the Landlord did not have a forwarding address, she made an application for Dispute Resolution on September 15, 2017; in doing so, I find she has satisfied the requirements of section 38(1) and I therefore decline to double the security deposit.

Conclusion

I find the Landlord is entitled to monetary compensation in the amount of **\$1,491.00** calculated as follows:

Outstanding hydro and water utility	\$188.50
14 hours of cleaning at \$20.00 per hour	\$280.00
Replacement of refrigerator crisper (\$85.00) in addition to shipping and handling (\$250.00)	\$110.00
Cost to remove Tenants' belongings	\$240.00
Steam cleaning of the carpets	\$472.50
Cleaning of oil spills in driveway	\$100.00
Filing fee	\$100.00
TOTAL AWARDED	\$1,491.00

I authorize the Landlord to retain the Tenant's \$1,300.00 security deposit towards the amounts claimed and I grant the Landlord a Monetary Order in the amount of **\$191.00**. This Order must be served on the Tenants and may be filed and enforce 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: May 4, 2018

Residential Tenancy Branch