



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlords requesting a monetary order for a claim for damages and repairs in the amount of \$1,100.00. The Landlords also request an order for payment of the filing fee.

The Landlords and Tenant appeared for the scheduled hearing; the Tenant had one witness, his sister, LM. I find that the notice of hearing was properly served and that evidence was submitted by all parties.

There was a substantial amount of evidence filed by the Landlords and uploaded only 9 days before the hearing date, on May 30th. Rule 3.11 of the Rules of Procedure state that an arbitrator may refuse to consider evidence where there was an unreasonable delay in submitting evidence. Although the rules state that an Applicant should file all evidence within 3 days of filing a claim, Rule 3.14 requires an applicant to file evidence *at least* 14 days prior to a hearing, in any event. This allows a respondent time to review the claims against him as he must file any evidence in response at least 7 days prior to the hearing. These rules are in place to ensure principles of natural justice are followed.

The Landlords state that the delay in the evidence is due to the fact that their USB drive was delivered to an Service BC office in Maple Ridge, which then had to parcel it up and upload it; they claim it was delivered on May 18th and that they sent the same evidence to the Tenant on that same date by registered mail. This is three weeks prior to the hearing date.

The Tenant acknowledged receipt of the additional evidence and explained that he had difficulty submitting his response by the deadline, requiring police assistance to deliver

them directly to the Landlords. Although the evidence was submitted late into the process, I find that both parties have had an opportunity to review and respond to the evidence and therefore I am allowing it to be considered in this case. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing.

Issues to be Decided

Are the Landlords entitled to a monetary order for damages and repairs, pursuant to section 67 of the *Residential Tenancy Act* ("Act")?

Are the Landlords entitled to reimbursement of their filing fee, pursuant to section 72 of the Act?

Background and Evidence

The tenancy began November 1, 2013 and ended November 30, 2017 after the Tenant provided notice to terminate it. A security deposit of \$1,100.00 was paid. The Landlords acknowledge that this is double the amount allowed under the law, but argued that it was agreed upon and the parties shook hands on that. The rent was set at \$1,100 per month, later increased to \$1,150.00, payable on the 1st of each month.

The Landlords provided an amended monetary order worksheet which outlined all their expenses and costs which they claim were necessary to repair and clean the premises so that it could be re-rented; these amount to about \$4,500.00, but the Landlords are only requesting the \$1,100.00 claimed for the security deposit, plus the filing fee. The Landlords did not submit an Amendment to an Application for Dispute Resolution seeking to amend their original application.

The Landlords accuse the Tenant of becoming violent and abusive during the move-out inspection, of refusing to sign the inspection form and refusing to provide a forwarding address. The Landlords also accuse the Tenant of improperly videotaping the premises

when they were on site and of manipulating or re-writing emails purported to be sent to the Tenant by the Landlord. They state that this is part of a scheme and was planned, with bad intentions on the part of the Tenant.

The Landlords provided photographic evidence and testimony as follows:

- Carpets only appeared to be vacuumed, but not in the perimeter of the room
- Toilet had to be removed; although it appeared clean, it had mold and “white worms” underneath the base and it was replaced at a cost of \$123.28;
- Floors, walls: they state nothing had been cleaned;
- Appliances not cleaned;
- They hired a company for home cleaning at cost of \$462.00; carpet cleaning was quoted at \$262.50, so the Landlord did the carpet cleaning himself;
- Bathroom sink had been “smashed” and had paint splatters in it; it was replaced for \$112.00 and the tap for \$45.00 by the Landlord himself, after receiving quotes of \$200 - \$400;
- The tub was “misused” with corrosion mark on the faucets that appeared to be burned from acid; it was replaced by the Landlord at a cost of \$499.00;
- The washer and dryer were very dirty, there was black “gunk” all underneath. It was replaced as a full set at a cost of \$1,006.00; it was about 6 years old;
- The fridge appeared fine but new tenants immediately complained it would not work, and it appeared that the dial was broken; the Landlords replaced that appliance for \$1,012.19;
- Baseboards were removed and replaced by a carpenter as they were chipped and gouged in places, at a cost of \$360.36;
- General garbage and bags were left about, old tires on the property; these were removed by the carpenter for \$84.00;
- The bulbs in the dining room, bathroom and one bedroom were burned out and replaced at a cost of \$28.00;
- The yard was left in poor condition, with apparent car tracks across the lawn and damage where boards had been placed over the lawn; a quote of \$1568.00 plus gst was obtained, but the work was instead completed by the Landlord over the next three months, partly with some help from the new tenant.

In conclusion, the Landlords argued that the Tenant broke the law by assaulting the Landlord and by being verbally abusive on the move out day; he was not in compliance with the law by refusing to sign the Condition Inspection Report, which was submitted into evidence, and he refused to give a forwarding address that day. They accuse him

of having staged the move out inspection by video-taping it and by trying to get the Landlords to show them more things that required cleaning. They accuse him of only submitting video that has been edited to show the parts he wanted to use as evidence.

The Tenant describes his interactions with the Landlords as friendly throughout most of the tenancy, and that the parties even exchanged small gifts at Christmas. He states that he purchased a lawn mower and cared for the yard, and that he only asked the Landlord for assistance when recovering from a serious illness; the Landlord's son was not available and so he hired a professional yard service to care for the property; November was raining almost every day, making it difficult to leave the yard in a nicely groomed condition. He states he also helped the Landlord remove a large bush, and used his own truck and trailer to haul it away.

He stated that he spent the final week of November cleaning the premises and preparing for his move. He had his sister work for 1 ½ days assisting with the cleaning on the weekend, and provided photographs of their work in progress; she confirmed the work that she did assisting her brother.

He hired a carpet cleaning service to professionally clean the carpets. He asked for a few extra hours on November 30th to complete the work as he was experiencing chest pains and needed to slow down; he stated he had a heart attack the previous year. The Landlords agreed, and he vacated around suppertime on November 30th, 2018, with a scheduled move-out inspection to be conducted on December 2, 2018.

The Tenant had a "feeling" that he was going to have an issue with the Landlords when he requested the return of his security deposit. He arrived with his sister as a witness, and videotaped the yard before going inside where the Landlords were already waiting.

He and his sister removed their shoes, as the Landlord had required, and introductions were made, followed immediately by the Landlord, GA, stating that the house was filthy and disgusting; the Landlord denies saying this. This took the Tenant by surprise as he had spent considerable time cleaning, in his view; he admits that he muttered an obscenity, but denies that it was directed at the Landlord or anyone in particular. He states he apologized as it was uncharacteristic for him to use profanity.

The Landlords then began pointing to the walls and floors, stating that there were cobwebs and a chip in the floor where his chair had been, and gouges in the baseboard which he acknowledges seeing in two places.

The Tenant says that the Landlord began having words with his sister and he felt obliged to step between the two of them and tell the Landlord not to speak to his sister that way, a phrase he says he repeated two more times. At around this point, the inspection did not continue, and the Tenant began recording what was going on. An argument ensued, the Landlords effectively ended the process, demanded a forwarding address, and the Tenant left.

He later rented a mailbox on December 4th and prepared a letter to advise the Landlords of where mail could be forwarded, only then realizing he had no work or home address for the Landlords as there is none noted on the documentation. He had to search land titles to obtain information and then it was sent by registered mail. In the meantime, the Landlords had filed this claim against him and requested to keep his security deposit.

The Tenant submitted two letters of reference, one from a former landlord, which claim that he is the type of person who is considered to be neat and tidy. The Tenant notes in his video that both Landlords had their outdoor shoes on while walking through the house that they had just cleaned.

Analysis

Section 67 of the Act states that a party may request payment of damages or loss which results from non-compliance with the Act:

67 *Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The Landlords are claiming the security deposit of \$1,100.00 in satisfaction of their claim for damages. It was noted that the amount they took from this Tenant exceeds

that allowed under the law, despite their contention that the parties both agreed voluntarily:

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit *that is greater than the equivalent of 1/2 of one month's rent payable* under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.
{bolding added}

The Tenant's duty to repair and maintain the rental unit is considered in section 32 of the Act:

32. ... (2) A tenant must maintain *reasonable health, cleanliness and sanitary standards* throughout the rental unit and the other residential property to which the tenant has access.

*(3) A tenant of a rental unit must **repair damage to the rental unit** or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

*(4) A tenant is **not** required to make repairs for **reasonable wear and tear**.* *{bolding added}*

In addition, Section 37(2) outlines the tenant's obligations at the end of the tenancy as follows:

37. .. (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 have reviewed the video submitted by the Tenant of his personal walk-through of the premises and generally speaking, it appears to be in a state of cleanliness, the carpets appeared to have been cleaned, and it is basically ready for new tenants. It would not be described as "filthy or disgusting" based on the video submitted.

It is unfortunate that the parties began to argue at the move-out inspection and that a report was not completed by both parties on the specific items now claimed by the Landlord. It is clear from the video recording that the Landlord cut the inspection off by stating that he was basically finished and demanded a forwarding address so it could be dealt with in a hearing. There seemed to be little opportunity to continue the inspection or reschedule it for a later date when tempers cooled, which is unfortunate for both parties as I suspect there could have been a consensus on at least some of the issues and concerns raised.

I have considered the photographs as submitted by the Landlords which show specific areas that were untidy or needing repair. Based on the evidence, I find the following:

- There appears to be some minor damage to the lawn which appears to be from tire tracks; there is no evidence to connect the Tenant to this damage and it is unclear when the photos were taken. The Tenant argues that the last month of the tenancy was the wettest November on record, and that the lawn did not look well-groomed despite having professional yard people doing the work. Without evidence that the Tenant or an invited guest was seen driving back and forth across the lawn, I cannot hold him liable for the minor damage seen in the undated photographs;
- The photographs of the fridge, stove and fan taken by the Landlord show that these items were not cleaned completely or at all. There are certain areas of the walls which appear to be in the utility area which need cleaning.
- The carpet appears to have been freshly cleaned by professionals as stated by the Tenant, despite one small corner photographed by the Landlords which could use extra attention. Accordingly, I am awarding additional cleaning expenses in the sum of \$50/hour for four hours, a reasonable amount for the areas requiring additional attention, for a total of **\$200.00**. This also takes into account the Landlord's duty to mitigate, which would include having inspected the appliances with the Tenant present so that the Tenant could have possibly given those items additionally cleaning at no cost;
- The bathroom sink does not appear to be "smashed" as described several times by the Landlord. There are small cracks underneath the base of the sink, visible only with the sink removed from the cabinet; there is some sort of white paint or substance in the bowl which may have been an attempt to do a repair. The evidence provided shows the new sink at the start of the tenancy. I am allowing
- the sum of **\$150.00** for the replacement of the sink as it appears that the damage likely occurred during the tenancy;

- The baseboards show a couple of minor gouges which I find could have been repaired instead of replacing the entire baseboard; there is a transition section of wood that was also cracked, I find that it is likely that this was damaged during the tenancy as it was not noted in the move-in inspection, and I award the sum of **\$100.00** for repairing and replacing damaged wood trim;
- The tub tap appears to have some sort of corrosion; the source is unclear. I note that the Condition Inspection Report submitted does not include a summary of the condition of the bathroom upon move-in and it is possible that it was an older tap and due for replacement from normal wear and tear; I do not find the Tenant liable for this expense;
- The door appears to have scuffs and other marks and required painting; I award **\$30.00** for this repair;
- The evidence shows burned out light bulbs and I award **\$25.00** to the Landlords for replacement.

Under section 38 of the Act, a landlord is required to repay the security deposit or apply for a dispute resolution within 15 days of the tenancy ending or having received the forwarding address, and I find that the Landlords did apply within the required time period on December 14, 2017 to make a claim to retain the security deposit.

I find that the Landlords are entitled to retain the sum of **\$505.00** for the damages, cleaning and repairs that they have proven to me on a balance of probabilities. This figure takes into account normal wear and tear, the age and general condition of the building, and the depreciation of items that were not in “new” condition.

The balance of the security deposit in the sum of **\$595.00** is to be paid to the Tenant, forthwith. Although the Landlords were partially successful in their claim, I am not prepared to award the \$100.00 filing fee as there was little attempt on their part to complete the move-out inspection which may have resolved most of the issues without the need for a hearing.

This order must be served on the Landlords and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlords fail to make payment. Copies of this order are attached to the Tenant’s copy of this Decision.

Conclusion

The Landlords shall retain the sum of \$505.00 of the security deposit for repairs, damages and cleaning. The Landlords shall pay the Tenant the balance of the security deposit in the amount of \$595.00.

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 11, 2018

Residential Tenancy Branch