



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damages pursuant to section 67 of the *Act*;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The tenants confirmed receipt of the landlord's application for dispute resolution. The landlord confirmed receipt of the tenants' evidence. The tenants stated that they were not in receipt of the landlord's photographic evidence. The landlord acknowledged that he may not have included the photographs in the evidence package served on the tenants.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedures sets out the requirements for the service of evidence, as follows:

All documents to be relied on as evidence must be clear and legible.

*To ensure a fair, efficient and effective process, **identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or***

submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

[My emphasis added]

I find that the landlord failed to serve the tenants with the same photographic evidence that was uploaded to the dispute website, therefore in accordance with Rule 3.7 I have not considered the landlord's photographic evidence in determining this matter.

Based on the testimonies of the parties, I find that the tenants were served with the notice of this dispute resolution proceeding in accordance with section 89 of the *Act*, with the exception of the landlord's photographic evidence as noted above.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damages?

Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of his claim?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed to the following facts pertaining to the tenancy. The tenancy began on September 30, 2014 and ended November 30, 2017. Monthly rent was \$1,800.00. A security deposit of \$900.00 was paid by the tenants and continues to be held by the landlord.

Both parties agreed that a move-in condition inspection report was completed and provided to the tenants. A copy of the report was submitted into documentary evidence by the landlord.

The landlord and tenant K.H. met on November 30, 2017 to conduct a move-out condition inspection. After completing the walk-through, the parties entered into a brief discussion regarding the return of the security deposit but were unable to reach an agreement. Tenant K.H. did not sign the condition inspection report and the landlord did not provide a copy of the report to the tenants. The landlord did not submit a copy of the move-out report into documentary evidence.

The landlord confirmed receipt of the tenants' forwarding address on December 2, 2017. The landlord did not return the security deposit and instead filed an Application for Dispute Resolution on December 15, 2017 to retain the full amount of the \$900.00 security deposit as compensation for damages to the rental unit.

The landlord testified that the rental unit is in a strata complex and was built around 2010. He stated that the building elements and décor are original to the home.

The landlord testified that the tenants had overflowed the bathtub which had caused damage to the living room ceiling requiring patching and painting. Other damages claimed included: excessive nail holes; a door that had to be painted and re-hung; two garage door panels dented; and stained carpets requiring extensive steam cleaning. The landlord also stated that the tenants had incurred strata fines for parking in the wrong place, however the landlord did not submit any letters or notices to quantify the cost, if any, of this infraction.

The tenants acknowledged that they had parked in the wrong spot and that their son had punched a door, which they were unable to get re-hung correctly. The tenants disputed the landlord's claim for carpet cleaning, and submitted their own receipt for carpet cleaning, dated November 30, 2017, as documentary evidence in support of their testimony that they had the carpets professionally cleaned prior to moving out. Further documentary evidence submitted by the tenants included email exchanges between the tenants and the landlord's agents regarding the tenants' arrangement to have carpet cleaners attend after the painters had completed their work on the weekend of November 25, 2017. The tenants testified that they had moved almost all of their belongings out of the rental unit prior to the end of November and had allowed the landlord access to undertake work in the rental unit, such as painting, in preparation for showing the property for sale.

The tenants claimed that the landlord never replaced the dented garage door panels prior to selling the house, therefore they should not be held responsible for this cost. The landlord stated that instead of fixing the damaged garage door, he had to provide a \$500.00 deduction on the sale price of the home to the buyer due to the damage. No documentary evidence was provided to support this claim.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for damage or loss resulting from a party violating the *Act*, the regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or *Act* by the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

In this case, the landlord did not upload to the dispute website any documentary evidence such as receipts or invoices to prove his claims for damage. Further to this, I have found that the photographic evidence uploaded by the landlord was not provided to the other party in advance of the hearing, and therefore is not before me for consideration.

The landlord uploaded a copy of the move-in condition inspection report, which was provided to the tenants, however, no move-out condition inspection report has been submitted into evidence for my consideration.

Therefore, I find that the landlord has submitted insufficient evidence to support his claims for compensation in relation to: paint and repair of living room ceiling; paint and repair for excessive nail holes; dented garage door panels; and strata fines. As such, I dismiss the landlord's claims for compensation in relation to these costs.

The tenants' evidence package included a copy of the landlord's receipt for the cost of carpet cleaning, as well as a copy of their receipt for carpet cleaning, so I will consider both pieces of evidence in determining whether or not the landlord is entitled to any compensation for carpet cleaning.

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 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,...

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises provides further explanation regarding the tenant's responsibility for carpet cleaning at the end of a tenancy, as follows:

CARPETS

...

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenants have submitted an invoice for professional carpet cleaning in the amount of \$200.00, dated November 30, 2017. The landlord claims that if the tenants did undertake professional carpet cleaning, it was not sufficient to remove the extensive stains. The landlord's invoice for carpet cleaning, also dated November 30, 2017, totalled \$500.00.

The tenants have submitted additional documentary evidence in the form of emails exchanged with the landlord's agent to support their claim that carpet cleaning was undertaken. Therefore, based on the documentary and testimonial evidence of the tenants, I find that there is sufficient evidence to support their claim that they cleaned the carpets at the end of the tenancy in accordance with Policy Guideline 1. Further to this, the emails from the landlord's agents stated that painters were attending the rental unit over the weekend of November 25, 2017. As the tenants had provided the landlord access for trades to complete work such as painting, and in light of the fact the landlord's photographic evidence was excluded from consideration, I find that the landlord has presented insufficient evidence to prove that there was extensive staining of the carpet beyond reasonable wear and tear, or that the tenants are responsible for the damage, as opposed to others with access to the rental unit at that time, such as the painters.

As a result of this finding, I dismiss the landlord's claim for compensation in relation to carpet cleaning costs.

The tenants have acknowledged that their son caused damage to a door that was not repaired adequately.

A tenant's obligation to repair damage to the rental unit is set out in section 32 of the *Act*, which states, in part:

32(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.

As such, I find that the landlord is entitled to compensation for the paint and repair to the door. I allocate a nominal award for damage in the amount of \$50.00.

In summary of the landlord's claims, I find that the landlord is entitled to a monetary award in the amount of \$50.00 for the damaged door.

Regarding the remainder of the landlord's claims for damages, I find that the landlord did not present sufficient evidence of the damages and as a result he failed to prove his claims on a balance of probabilities. Therefore, I dismiss without leave to reapply, the remainder of the landlord's claims for damages due to insufficient evidence.

The landlord requested in his application authorization to retain the tenants' security deposit, or a portion of it, in satisfaction of any monetary claims awarded.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit pursuant to section 38(6) of the *Act*.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address in writing. In this case, the landlord confirmed receipt of the tenants' forwarding address on December 2, 2017, which is later than the end date of the tenancy. As the landlord's Application for Dispute Resolution was filed on December 15, 2017, which is within 15 days of the date the forwarding address was received by the landlord, I find that the landlord complied with section 38(1) of the *Act* and is entitled to claim against the tenants' security deposit.

Section C of the Residential Tenancy Policy Guideline 17. Security Deposit and Set Off provides the following direction regarding the return or retention of the security deposit through dispute resolution:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit;...*

...whether or not the tenant has applied for dispute resolution for its return.

As such, I order that the landlord retain \$50.00 of the security deposit in satisfaction of his claim for damages, and I order that the landlord return the remaining \$850.00 of the security deposit to the tenants, in accordance with section 72 of the *Act*.

To give effect to this order, I issue a Monetary Order in the tenants' favour for the remaining amount of the security deposit of \$850.00.

The landlord did not succeed in his claim to retain all of the security deposit, due in large part to his failure to properly serve his evidence on the other party and submitting insufficient evidence to prove his claim. Therefore, the landlord shall bear the costs of his filing fee for this application.

Conclusion

I issue a Monetary Order in the amount of \$850.00 in favour of the tenants, for the return of the security deposit less the damages owed to the landlord. The breakdown is as follows:

Item	Amount
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Amount of security deposit held by landlord	\$900.00
LESS: Monetary award to landlord for damages	(\$50.00)
Total Monetary Order in Favour of Tenants	\$850.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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 27, 2018

Residential Tenancy Branch