



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HENRY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL (Landlord's Application)
 MNDC-T, MNSD, FFT (Tenants' Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution they requested monetary compensation from the Landlord, including return of their security deposit, and to recover the filing fee. The Landlord also requested monetary compensation from the Tenants for loss of rent and cleaning of the rental unit, authority to retain the Tenants' security deposit, and recovery of the filing fee.

The hearing was conducted by teleconference on August 17, 2018. Both parties called into the hearing. The Landlord was represented by an agent, P.L. who was assisted by a translator, J.X. Both Tenants were present as were two witnesses for the Tenants, R.S. and J.S. All present 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.

Preliminary Matter

The parties provided their email addresses at the outset of the hearing. The parties

confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants for loss of rent and cleaning of the rental unit?
2. Are the Tenants entitled to monetary compensation from the Landlord representing double their security deposit pursuant to section 38 of the *Act*?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

The tenancy began November 1, 2015. Monthly rent was payable in the amount of \$1,255.00. The initial term was for one year ending on October 31, 2016 which continued on a month to month basis following the expiration of the term. The Tenants paid \$600.00 security deposit. At the time the tenancy ended rent was payable in the amount of \$1,300.00.

A move in condition inspection was done on November 1, 2015.

The Tenants gave notice to end the tenancy on December 2, 2017 and moved from the rental unit on December 31, 2017. The rental unit was re-rented as of January 15, 2018 for \$1,325.00.

In this hearing the Landlord sought the sum of \$650.00 in rent for January 1-15, 2018 as well as \$170.00 for cleaning.

In support the Landlord's agent provided copies of photos taken on December 31, 2017. P.L. confirmed that he took the photos and he stated that when the photos were taken he spoke to the Tenants about how the rental unit was not properly cleaned.

Although I asked the Landlord's agent numerous times whether a paper move out condition inspection report was done in accordance with the *Residential Tenancy Act* and the *Regulations* the Landlord's agent simply responded that he had taken photos

on the date in question. P.L. then claimed that the move out condition inspection was completed however the Tenants refused to sign. When I asked where the move out report was, he indicated he completed it on the same form that was introduced in evidence.

The Landlord's agent also stated that there was no damage to the rental unit only cleaning required. In support of this claim he submitted a copy of an invoice for \$170.00 for cleaning.

The Tenant A.S. testified as follows. He stated that the Landlord's agent did not complete a move out condition inspection as required, although P.L. did take photos of the toilet and the sink faucet and expressed the rental unit was not cleaned properly.

A.S. stated that he, K.H., her sister, and his parents cleaned for about five hours. He stated that the rental unit was clean when they moved out and much cleaner than when they moved in. He also confirmed that he took numerous photos of the rental unit when they moved out confirming the rental unit was cleaned. Those photos were also provided in evidence.

The Tenant K.H. also testified. She stated that she helped to clean the rental unit, as well as A.S.'s parents and her sister. She confirmed that they spent many hours cleaning and that the rental unit was clean when the tenancy ended.

K.H. confirmed that she was not present when the final inspection occurred.

Tenant, A.S.'s father, R.S., also testified. He confirmed he was present when the tenancy ended, helped clean the unit and was there when his son took the photos of the rental unit.

R.S. confirmed that P.L. was very happy with the condition of the rental unit, although he was concerned about a hair on the bathroom sink and the stove. R.S. stated that P.L. did not complete a move out condition inspection report as required, that there were "no papers" and that P.L. simply took a few close up photos and then turned the lights off.

R.S. stated that P.L. also brought them to another unit with a brand new stove and said that was what the stove should look like. R.S. stated that the stove was at least 20 years old and try as they did they could not remove the stains. R.S. confirmed that the stove was stained when the tenancy began. He also stated that he informed P.L. that

he failed to deal with the torn drapes, the mould in the rental unit during the tenancy and was not maintaining the property as required.

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 *Residential Tenancy 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.

I find the Tenants gave notice to end their tenancy on December 2, 2017.

Section 45 of the *Act* allows a tenant to end a tenancy as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Although the tenancy began as a fixed term tenancy, it reverted to a month to month at the expiration of the fixed term. As such and pursuant to the above, I find the effective date of the Tenants' December 2, 2017 notice to end tenancy was January 31, 2018.

I accept the Landlord's evidence that they were not able to re-rent the rental unit until January 15, 2018 such that they incurred a loss of half a months' rent. As rent was payable in the amount of \$1,300.00 I award the Landlord recovery of the **\$650.00** claimed for loss of rent.

The Landlord's agent claimed \$170.00 as the cost to clean the rental unit.

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.

Photos submitted by the parties confirm the rental unit was left reasonably clean. Although some minimal cleaning may have been required in and around the toilet, I find the amount claimed by the Landlord to be excessive considering the evidence before me.

Residential Tenancy Branch Policy Guideline 1 provides that a tenant is responsible for cleaning baseboards. The photos submitted by the Landlord indicate this was not done in the bathroom.

Policy Guideline 1 also provides that “at the end of the tenancy the tenant must clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher.” The photos submitted by the Landlord indicate the freezer was not wiped out.

I accept the Tenants’ evidence that the stove was stained at the beginning of the tenancy and that it was not possible to clean the stove. I also accept A.S.’ testimony that the stove was likely 20 years old. *Residential Tenancy Branch Policy Guideline 40* provides that a stove has a useful lifespan of 15 years such that it is likely this stove is nearing the end of its useful building life. I therefore decline the Landlord’s request for compensation for related cleaning.

As I have found that the rental unit required some minor cleaning at the end of the tenancy I award the Landlord the sum of \$20.00 for the cost to finish the cleaning.

The Landlord’s agent claimed to have completed a move out condition inspection report. The Tenant and his witness, R.S., denied any such report was completed although they conceded the Landlord’s agent took photos of the rental unit at the time an informal inspection was done.

Introduced in evidence was a copy of the move in condition inspection report. While there is a space to indicate when the move out inspection was done, as well as to make notations as to the condition of the rental at that time, none of the sections relating to the move out were completed.

I accept the Tenants’ evidence, including the testimony of his witnesses that the move out report was not completed in accordance with the *Residential Tenancy Act* or the *Regulations*. As such, I find the Landlord has extinguished their right to claim against the deposit for damage to the rental unit pursuant to section 36 of the *Act*.

Although the Landlord’s right to claim against the deposit for damage has been extinguished, the Landlord retained the right to claim for other losses such as loss of rent. In this case I have found the Landlord is entitled to loss of rent for January 1-15, 2018.

I also note that the tenancy ended on December 31, 2017 and the Landlord filed for dispute resolution on January 14, 2018, such that the Landlord filed within 15 days as required by section 38(1) of the *Act*. Consequently, I decline the Tenants’ request for double their security deposit.

As the parties have enjoyed divided success in their applications I find they should each bear the cost of their filing fees.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$670.00** including \$650.00 for loss of rent for January 1-15, 2018 and \$20.00 for cleaning.

As the Landlord continues to hold the Tenants' \$600.00 security deposit, the Landlord is entitled to a Monetary Order for the balance due in the amount of **\$70.00**. 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: August 17, 2018

Residential Tenancy Branch