



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S
 FFT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on March 8, 2018, the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and to recover the filing fee. In the Tenant's Application for Dispute Resolution, filed on April 2, 2018, the Tenant requested return of double her security deposit and to recover the filing fee.

Only the Landlord and his representative, D.M., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:13 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlords and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's agent, D.M., testified that the Tenant was served the Notice of Hearing and the Application on March 8, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. D.M. stated that this package was returned to sender such that the Landlord sent the package again on April 19, 2018. That tracking number is also provided on the cover page.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

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.

Although the Landlord sent a further package by registered mail after the first was returned, there is no obligation to do so. Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of March 13, 2018 and I proceeded with the hearing in their absence.

Preliminary Matter—Tenant's Failure to Attend Hearing

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenant did not call into the hearing to present her claim and the Landlord appeared and was ready to proceed, **I therefore dismiss the Tenant's claim without leave to reapply.**

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'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 Tenant?
2. What should happen with the Tenant's security deposit?

3. Should the Landlord recover the filing fee?

Background and Evidence

D.M. testified that the tenancy began on August 1, 2014. The Tenant paid a \$1,100.00 security deposit and a \$1,100.00 pet damage deposit for a total of \$2,200.00 in deposits paid.

The tenancy ended January 31, 2018 with a move out inspection being completed on February 5, 2018. The Tenant provided her forwarding address in writing by letter dated February 22, 2018 (a copy of which was provided in evidence); D.M. confirmed that the letter was received on February 26, 2018.

The Landlord applied for dispute resolution on March 8, 2018.

The Landlord submitted in evidence a copy of a Monetary Orders worksheet detailing the amounts claimed as follows:

Replacement of stove control board	\$608.48
Repair of kitchen countertop	\$483.00
Cleaning	\$250.00
Replacement of bedroom flooring as a result of damage caused by Tenant's pets (total cost of flooring replacement in rental unit: \$3,025.70)	\$368.48
TOTAL CLAIMED	\$1,709.96

D.M. testified that the stove was damaged at the end of the tenancy and the cost to replace the control panel was \$608.48. Introduced in evidence was a copy of the invoice for the stove. The Landlord stated that the stove was approximately two years old and the cost to replace would have been approximately \$1,000.00 such that the repair was a more economical choice.

D.M. also testified that the Tenant failed to clean the water on the countertop such that the countertop required replacement. Photos submitted by the Landlord confirmed that the counter was significantly damaged by water, particularly under the faucet.

The Tenant also failed to clean the rental unit as required. The Landlord stated that all of the light fixtures required cleaning, which he personally cleaned. He also provided in evidence an invoice from the cleaner confirming the \$250.00 cost claimed.

The Landlord also claimed the cost to replace the bedroom flooring as he claimed it was significantly damaged by the Tenant's pets; he stated that the pets were locked in the bedroom while she was at work and they used the bedroom floor as their "toilet". The Landlord incurred the cost of \$3,025.70 to replace all the flooring in the rental unit as he wished to have the flooring match; however, the Landlord's agent confirmed that the \$368.48 claimed was the amount the Landlord paid to replace the flooring in the subject bedroom. The Landlord's Agent submitted that initially the Landlord was willing to give the Tenant half of her security deposit back at the end of the tenancy as a compromise, despite knowing it cost him significantly more to repair the unit.

The Landlord also testified that the bedroom flooring was replaced during the previous tenancy due to a flood; as such he testified that it was approximately six years old at the time the tenancy ended.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

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.

After consideration of the Landlord's undisputed testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Tenant did not clean and repair the rental unit as required by the *Act*. In making this finding I am persuaded by the testimony of the Landlord as well as the

photos submitted. Further, the invoices provided by the Landlord support the amounts claimed.

I accept the Landlord's agent's submission that repairing the stove was less expensive than replacement; in this manner the Landlord has fulfilled his obligation to minimize his losses pursuant to section 7 of the *Act*. I therefore award the Landlord the amounts claimed to repair the stove.

I also accept the Landlord's evidence that the countertop required repairs at the end of the tenancy. Again I am persuaded by the photos submitted by the Landlord which indicate significant water damage. I therefore award the Landlord the amounts claimed.

I also accept the Landlords' evidence that the rental unit required cleaning at the end of the tenancy. He stated that when he first showed the rental unit to prospective tenants they were reluctant to rent due to the unclean condition. He confirmed that he personally cleaned all the light fixtures and hired a third party to complete the cleaning to bring the unit to a reasonable standard. The amounts claimed by the Landlord are therefore recoverable from the Tenant.

Residential Tenancy Branch Policy Guideline 40 provides that hardwood flooring has a useful building life of 20 years. An Arbitrator may take into account the useful building life of a particular building element when awarding compensation and may reduce the amount claimed accordingly.

While the evidence suggests the flooring in the bedroom was six years old at the end of this tenancy, in this case I make no such deduction. I accept the Landlord's evidence that he was required to replace the flooring in the remainder of the rental unit to ensure it matched the bedroom flooring. I accept the Landlord's submissions that the cost to the Landlord was \$3,025.70. While the Landlord did not claim compensation for this sum, I find that this cost was a direct result of the damage caused to the bedroom flooring by the Tenants' pets. As such, I award the Landlord the full \$368.48 claimed.

As the Landlord has been substantially successful I also award him recovery of the \$100.00 filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,809.96** for the following:

Replacement of stove control board	\$608.48
Repair of kitchen countertop	\$483.00
Cleaning	\$250.00
Replacement of bedroom flooring as a result of damage caused by Tenant's pets (total cost of flooring replacement in rental unit: \$3,025.70)	\$368.48
Filing fee	\$100.00
TOTAL AWARDED	\$1,809.96

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain \$1,809.96 of the Tenant's \$2,200.00 deposits towards the amounts awarded.

The Tenant is entitled to return of the balance of her deposits in the amount of \$390.04. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$390.04**. Should the Landlord not pay as required, the Tenant must serve the Order on the Landlord and may, if necessary, file and enforce the Order in the B.C. Provincial Court (Small Claims Division).

Having failed to attend the hearing, the Tenant's application is dismissed without leave to reapply.

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: September 27, 2018

Residential Tenancy Branch