



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KI LOW NA FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested monetary compensation from the Tenant, authority to retain the security deposit and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on September 14, 2018.

Both parties called into the hearing. The Landlord was represented by J.W., the Program Manager, and T.L., the Program Director. The Tenant attended on her own behalf. All in attendance 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 Tenant for unpaid rent and repairs to the rental unit?
2. What should happen with the Tenant's security deposit?

3. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

J.W. testified on behalf of the Landlord.

Also introduced in evidence was a copy of the residential tenancy agreement which confirmed this tenancy began July 1, 2017. Monthly rent was \$938.00 and the Tenant paid a \$469.00 security deposit.

Paragraph 13 of the agreement provided that the rental unit was non-smoking.

J.W. testified that the Tenant smoked in the rental unit contrary to the express terms of the agreement. J.W. also confirmed that despite efforts to clean the unit, it required repainting to cover the smell of smoke.

J.W. also testified that the Tenant moved out without providing proper notice and as such the Landlord suffered a loss of rent for February 1, 2018 to February 15, 2018. Introduced in evidence was a copy of a letter from the Tenant dated January 15, 2018 wherein she writes she will be vacating the rental unit that day.

J.W. stated that the rental unit was re-rented on February 10, 2018; although she confirmed that the new renter did not pay rent until February 15, 2018.

The Landlord stated that the Tenant also failed to pay rent for January 2018.

In support of the claim the Landlord filed a Monetary Orders worksheet in which the following was claimed:

Cleaning costs	\$150.00
Preparation and painting	\$1,000.00
Painting supplies	\$181.94
Unpaid rent (January 2018)	\$958.00
Unpaid rent (February 2018)	\$479.00
TOTAL CLAIMED	\$2,768.94

The Landlord sought to retain the Tenant's \$469.00 security deposit such that the Landlord sought a monetary order in the amount of \$2,299.94. The Landlord also claimed the filing fee for a total of \$2,399.94.

The Landlord also provided in evidence copies of estimates from painters ranging from \$2,387.41 to \$3,477.18. The Landlord confirmed that by using their "in house maintenance worker" they were able to reduce the painting cost to \$1,000.00.

Also introduced in evidence was a copy of the Move Out Condition Inspection Report wherein the Tenant agreed to the condition of the rental. The report also indicated that the Tenant agreed that the Landlord would attempt to clean the rental unit failing which it would be painted.

The Tenant responded to the Landlord's claim as follows.

She confirmed that although she agreed the rental unit required painting she believed the amounts claimed were high. The Tenant also claimed that the rental unit was "spotless" when she moved out.

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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

I accept the Landlord's evidence that the Tenant failed to pay rent as required by section 26 of the *Act* and the residential tenancy agreement. I therefore award the Landlord the **\$958.00** claimed for January 2018.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide 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]*.

In this case I find the Tenant gave notice to end her tenancy on January 15, 2018. Pursuant to the above the effective date of this notice is February 28, 2018. The Landlord was able to re-rent the unit as of February 15, 2018 such that the Tenant is responsible for the unpaid rent until this time. I therefore award the Landlord the **\$479.00** claimed for rent for February 1-15, 2018.

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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find the rental unit required cleaning and repainting at the end of the tenancy. I further find the Landlord mitigated their losses by hiring an "in house" maintenance worker to clean, prepare and to paint the rental unit. While the Tenant may believe the unit was "spotless", she agreed on the Condition Inspection Report that the Landlord would attempt to clean the unit failing which it would be painted; this implies she was aware some cleaning was required.

The Tenant disputed the amounts claimed by the Landlord however she did not provide any submissions or evidence to support her position that the amounts claimed were too high.

I find the amounts claimed by the Landlord to be reasonable and I therefore award the Landlord the amounts claimed for cleaning, preparation of the rental unit for painting as well as painting the rental unit. I also award the Landlord the amounts claimed for painting supplies.

As the Landlord has been substantially successful they are entitled to recover the filing fee.

Conclusion

The Landlord is awarded monetary compensation in the amount of **\$2,399.94** for the following:

Unpaid rent (January 2018)	\$958.00
Unpaid rent (February 2018)	\$479.00
Cleaning costs	\$150.00
Preparation and painting	\$1,000.00
Painting supplies	\$181.94
Filing fee	\$100.00
TOTAL CLAIMED	\$2,668.94

The Landlord may retain the Tenant's **\$469.00** security deposit towards the amounts awarded and is granted a Monetary Order in the amount of **\$1,930.94** for the balance due. This Order must be served on the Tenant 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: September 17, 2018

Residential Tenancy Branch