



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1077036 BC LTD. SANDY CREEK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S, MNSD

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their application May 15, 2018 (the “Landlord’s Application”). The Landlord sought compensation for damage caused to the rental unit. The Landlord sought to keep the security deposit. The Landlord also sought reimbursement for the filing fee.

The Tenant filed her application June 8, 2018 (the “Tenant’s Application”). The Tenant applied for the return of double the security deposit.

This matter originally came before me for a hearing on July 13, 2018 and was adjourned. An interim decision was issued July 17, 2018. This decision should be read in conjunction with the interim decision.

The Tenant appeared at the hearing with the Advocate. The Property Managers appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant confirmed she had received the hearing package and Landlord’s evidence prior to the last hearing. S.L. confirmed the Landlord received the hearing package and Tenant’s evidence prior to the last hearing. The Landlord had not submitted further evidence. The Tenant had submitted further evidence. S.L. confirmed the Landlord received the further evidence. I had not received the further evidence. I allowed the Tenant to upload it given the Landlord had received it. The Tenant did so.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for damage caused to the unit?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?
4. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Landlord sought the following compensation:

Item	Description	Amount
1	Cleaning	\$1,120.00
2	Cadaver neutralizing treatment	\$250.00
3	Repairs, maintenance and painting	\$1,575.50
4	Repairs	\$1,123.88
	TOTAL	\$4,069.38

I note that the Landlord calculated the above to be \$4,069.36 but it should be \$4,069.38.

A written tenancy agreement was submitted. It names a different landlord; however, both parties agreed the Landlord took over as property managers in 2016 and that the Landlord is now the landlord in relation to this tenancy. The agreement is with the Tenant. It relates to the rental unit. The tenancy started September 13, 2014 and was for a fixed term ending August 31, 2015. Both parties agreed the tenancy then became a month-to-month tenancy. A security deposit of \$437.50 was paid. The agreement is signed by the Tenant and on behalf of the Landlord.

Both parties agreed the tenancy ended April 30, 2018. Both parties agreed the Landlord still holds the entire security deposit.

Both parties agreed on the following. The Tenant provided her forwarding address to the Landlord in writing on April 30, 2018. The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree that the Landlord could keep some or all of the security deposit.

The parties agreed on the following in relation to a move-in inspection. The Tenant and someone for the Landlord did the inspection August 25, 2014. A Condition Inspection Report was completed and signed by the Tenant and on behalf of the Landlord.

The Tenant testified that the unit was empty at the time of the move-in inspection. She said she received a copy of the Condition Inspection Report personally the day after the inspection.

In relation to a move-out inspection, S.L. testified that one was done April 30, 2018. The Tenant testified that she did not participate in the move-out inspection and that she was not asked to participate. She said she was told she did not need to walk around with S.L. while he did the inspection. She testified that she stayed in the kitchen while the inspection was completed. She testified that she did not sign the Condition Inspection Report because S.L. told her it was not a legal document and she did not need to.

The Tenant submitted a letter from the Advocate which supports the Tenant's testimony in relation to S.L. telling her she did not need to sign the move-out Condition Inspection Report.

S.L. took the position that the Tenant did participate in the inspection. He said she sat and waited for him to complete the inspection. He said he gave her the Condition Inspection Report to sign but the Tenant refused to sign it. He denied that he told the Tenant she did not have to sign the Condition Inspection Report.

Both parties agreed the unit was empty during the move-out inspection. Both parties agreed the Landlord completed a Condition Inspection Report. A copy of this was submitted. It is signed on behalf of the Landlord but not by the Tenant.

The Tenant testified that she was not provided a copy of the Condition Inspection Report except as evidence for this hearing. She testified that she received the evidence June 30, 2018. I understood the parties to agree the evidence was sent around June

29, 2018. The Property Managers did not submit that the Condition Inspection Report was provided to the Tenant other than as evidence for this hearing.

I advised the parties of section 18 of the *Residential Tenancy Regulation* (the “*Regulations*”). L.A. submitted that the Landlord was not required to send a copy of the Condition Inspection Report to the Tenant as the Tenant had not signed it and therefore it was not complete. The Advocate submitted that the Landlord failed to follow the *Regulations*.

The Tenant did not agree the Condition Inspection Report on move-out is accurate. I note that the Tenant signed the Condition Inspection Report on move-in indicating she agreed with it.

Item #1

The Property Managers testified as follows in relation to item #1. There was a continual lack of basic routine cleaning throughout the tenancy. Upon move-out, there was animal feces found beside the toilet. There was debris left in the closets. The windows were dirty. The Property Managers pointed to the photos submitted and the outline from the person who cleaned the unit regarding what had to be done. S.L. said he believed the cleaner charged \$25.00 per hour.

The Condition Inspection Report on move-out shows numerous areas of the unit were dirty.

The Landlord submitted an Invoice for the cleaning showing it cost \$1,120.00. It does not include a breakdown of the hours or cost per hour.

The outline of the cleaning that had to be done shows extensive cleaning was done and that some areas required extra cleaning such as the walls that required three washes and had to be scraped due to chunks stuck on them. The outline includes a breakdown of the cost for each area of the unit that had to be cleaned.

The Tenant denied having a pet in the unit. She submitted that it was dirt or sand beside the toilet not animal feces. She testified that she could not reach this area with a mop. She testified that the floors were clear upon move-out but had not been mopped. She said she was unable to move the fridge and stove as they were not on wheels and that was the reason for the items left under these. She disputed the amount of the cleaning claimed by the Landlord. The Tenant agreed the unit needed to be swept and

mopped and wiped down. She agreed the unit was dirty but disagreed with the cost of the cleaning.

The Tenant submitted a signed letter and Invoice from a woman she spoke to about cleaning the apartment. The Invoice is an estimate. The cleaner walked through the unit and made notes about the cleaning required. The notes indicate the stove and fridge do not appear to be on wheels. The cleaning estimate is four to six hours at \$20.00 per hour for a total of \$120.00.

In reply, L.A. testified that the fridge and stove are on wheels.

Item #2

The Property Managers testified that, due to the smell in the unit, it had to be cleaned with a special treatment. The Property Managers said the smell was from a combination of the unit not being cleaned regularly and a cat being in the unit.

The Landlord had not submitted a receipt for this special treatment. The Property Managers said the cleaning cost \$120.00 but the \$250.00 requested includes office administration fees for having to organize the cleaning.

The Tenant disputed that the unit smelled and said this was not mentioned on move-out.

There are some notations on the move-out Condition Inspection Report that might relate to this cost including "cat urine – 250" and "sanitation – 300".

Item #3 and #4

The Landlord submitted an Invoice for labour relating to painting the unit.

The Landlord submitted a further Invoice for the remaining repairs and maintenance including the following: replacing air conditioner; materials for painting; replacing weather stripping; kitchen tap set; labour for tap set and weather stripping; window screens; and labour for screens.

The Property Managers testified that the entire rental unit had to be repainted due to the condition of the unit. The Property Managers said the walls were dinged, dented and dirty. The Property Managers did not know when the unit was last painted.

The Property Managers testified that the walls, cupboards and floors had to be wiped down with TSP given the grease and grime on them. The Property Managers said this had to be done prior to painting the walls.

The Landlord had submitted a break down of the hours spent on the repairs, maintenance and painting. The breakdown includes plaster repair which the Property Managers testified was required due to dings, dents and nail holes in the walls.

The move-out Condition Inspection Report shows walls in the unit were scuffed and had tacks and nails in them. It shows the walls of the unit were dirty throughout.

In relation to the weather stripping, S.L. acknowledged the poor quality of the weather stripping in the unit but submitted that the Tenant could have been more careful around it so as not to damage it.

The move-out Condition Inspection Report does not mention weather stripping but does have a note on page three about windows.

In relation to the kitchen tap, the Property Managers testified that the water in the area is calcified and faucets get plugged up if they are not cleaned. When asked if the faucet still worked, S.L. said he assumed the faucet was spitting water but could not provide more detail about this.

The move-out Condition Inspection Report states "sink stoppers plugged" but makes no mention of the faucet.

In relation to the air conditioner, the Property Managers testified as follows. The air conditioner was not performing to capacity upon move-out. This was due to it not being cleaned and the filter being plugged up. The air conditioner had to be replaced.

The Condition Inspection Report on move-out shows the air conditioner needed cleaning. There is a note about replacing the air conditioner on page three of the report.

S.L. could not provide details about the window screens or labour for these. I do not see anything specifically about window screens in the move-out Condition Inspection Report.

The Tenant agreed the unit needed to be painted upon move-out. She said she understood the plaster repair but disputed the number of hours it took to do. She testified that there were maybe 40 tack holes in the walls at most.

The Tenant disputed the painting costs. She pointed to a letter submitted regarding the age of the paint in the unit. The Tenant testified that there were holes in the walls when she moved into the unit. The Tenant disputed the amount of time the painting took.

The Tenant disputed that the entire unit needed to be wiped down with TSP as stated by the Property Managers.

The Tenant disputed that the faucet needed to be replaced or repaired. She said the faucet worked fine.

The Advocate submitted that the air conditioner in the unit is 10 years old and referred to the letter submitted from the previous property manager. The Advocate pointed out that the Landlord has not provided any evidence about the window screen replacement. The Advocate submitted that there is no evidence the faucet needed to be replaced.

The Tenant submitted a letter from a previous property manager confirming the unit was only partially painted prior to the Tenant moving in. The letter indicates the air conditioner is at least eight years old.

The move-in Condition Inspection Report shows the walls in the unit had normal wear and tear, some minor wear and some major wear upon move-in.

Analysis

Section 7 of the *Residential Tenancy Act* (the “*Act*”) states:

(1) If a...tenant does not comply with this Act...or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant’s] non-compliance...must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* sets out the obligations of a tenant upon vacating a rental unit and states:

(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...

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Regulations*. Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

There was no issue that the Tenant participated in a move-in inspection and therefore I find she did not extinguish her rights in relation to the security deposit under section 24(1) of the *Act*.

Based on the testimony of the parties, I do not find that this is a situation where the Landlord provided the Tenant with two opportunities to do a move-out inspection and the Tenant refused to participate. I note that S.L. took the position that the Tenant did participate in the move-out inspection. In the circumstances, I do not find that the Tenant extinguished her rights in relation to the security deposit under section 36(1) of the *Act*.

Based on the testimony of the parties, I find the Landlord did not extinguish their rights in relation to the security deposit under section 24(2) of the *Act*.

There was no issue that the Landlord received the Tenant's forwarding address in writing on April 30, 2018, the same day as the condition inspection. Pursuant to section 18 of the *Regulations*, the Landlord had 15 days to give the Tenant a copy of the move-out Condition Inspection Report. I find the Landlord failed to comply with section 18 of the *Regulations* as the Tenant stated she did not receive a copy of the move-out Condition Inspection Report until June 30, 2018 and the Property Managers did not dispute this. I do not accept the submission of L.A. that section 18 of the *Regulations* does not apply because the Tenant did not sign the move-out Condition Inspection Report. There is no reason this should relieve the Landlord of their obligation in relation to providing the Tenant with a copy of the record created during the move-out inspection. Given the Landlord failed to comply with section 18 of the *Regulations*, the Landlord extinguished their rights in relation to the security deposit under section 36(2)(c) of the *Act*.

Pursuant to section 38(1) of the *Act*, the Landlord was required to repay the security deposit or apply for dispute resolution claiming against it within 15 days of April 30, 2018, the end of the tenancy and date the Tenant provided her forwarding address in writing. However, because the Landlord had extinguished their right to claim against the security deposit for damage, the only option open to the Landlord was to return the security deposit. There is no issue that the Landlord did not return the security deposit. Therefore, I find the Landlord breached section 38(1) of the *Act*. Pursuant to section 38(6) of the *Act*, the Landlord cannot claim against the security deposit and must pay the Tenant double the deposit. The Landlord therefore must pay the Tenant \$875.00.

The Landlord is still entitled to claim for damage to the rental unit and I consider that now.

Item #1

Based on the testimony of the Property Managers, photos, outline from the cleaner and move-out Condition Inspection Report, I find the unit was not reasonably clean upon move-out. I did not understand the Tenant to dispute this as her own evidence seems to support this. I find the Tenant breached section 37 of the *Act* in this regard.

I accept that the unit had to be cleaned. Again, the Tenant did not dispute this. I accept that the cleaning cost \$1,120.00 based on the Invoice submitted. The Tenant disputed this amount.

I am not satisfied based on the evidence provided that \$1,120.00 for cleaning is a reasonable amount. The Property Managers testified that the cleaner charged \$25.00 per hour. This would mean the unit took 44 hours to clean. None of the evidence submitted by the Landlord satisfies me that the unit required 44 hours of cleaning. In this regard, I note the evidence submitted by the Tenant from a cleaner who estimated the required cleaning would take four to six hours.

I am satisfied based on the photos submitted that areas of the unit required extensive cleaning. The photos show the unit was not even wiped down. However, only a small portion of the unit is depicted in the photos. Based on the photos, I find the estimate of hours required for cleaning by the Tenant's cleaner to be modest. However, I cannot be satisfied that the number of hours claimed by the Landlord's cleaner is reasonable. Based on the photos, I accept that three hours for the kitchen, three hours for the bathroom and three hours for the remainder of the rental unit would have been reasonable. I find the Landlord is entitled to reimbursement for nine hours of cleaning at \$25.00 per hour for a total of \$225.00. I also note that the cleaner's outline includes a cost of \$29.00 for industrial cleaner and I award the Landlord reimbursement for this as well.

Item #2

Assuming the unit smelled upon move-out and that a special treatment was required to address the smell, the Landlord submitted no evidence that this treatment was done and no evidence to support the cost claimed. In the absence of this evidence, I decline to award the Landlord reimbursement for item #2.

Item #3 and #4

In relation to painting, the Landlord submitted no photos of the walls of the unit. I note that the move-in Condition Inspection Report states that there was normal wear and tear, some minor wear and some major wear on the walls upon move-in. I accept that the walls were scuffed and had tack and nail marks in them upon move-out based on the move-out Condition Inspection Report and testimony of the Property Managers. The Tenant acknowledged there were tack holes in the walls and agreed the unit needed painting.

However, the Tenant also raised the issue of the useful life of paint which according to Policy Guideline 40 is four years. The Property Managers did not know how old the paint was. The Tenant provided evidence that some of the unit was painted at the outset of the tenancy but not the entire unit. The tenancy lasted approximately three and a half years. Considering the useful life of paint, I accept that the Landlord is entitled to reimbursement for approximately one-eighth of the painting cost. Further, considering that only a portion of the rental unit was painted at the start of the tenancy, I find the Landlord is entitled to half of this amount. Therefore, I award the Landlord \$122.00 for the painting including the labour and materials.

I am not satisfied based on the evidence provided that the damage to the weather stripping was beyond reasonable wear and tear. This is particularly so given S.L.'s comments about the poor quality of the weather stripping. I am not satisfied the Tenant breached section 37 of the *Act* in relation to the weather stripping. I decline to award the Landlord reimbursement for this item.

Nor am I satisfied the Tenant should be responsible for the faucet repair. The Tenant disputed that there was anything wrong with the faucet. The Landlord provided insufficient evidence to support the position that the faucet needed to be replaced or repaired due to actions or neglect of the Tenant. I decline to award the Landlord reimbursement for this item.

I accept that the air conditioner was not working properly upon move-out based on the testimony of the Property Managers, move-out Condition Inspection Report and notes on the Invoice from the repair person. I accept that this was caused by lack of cleaning based on the notes on the Invoice. I find the Tenant should have cleaned the air conditioner during the tenancy and that she breached section 37 of the *Act* by leaving the air conditioner in this state.

I accept that the air conditioner must be replaced based on the testimony of the Property Managers, move-out Condition Inspection Report and notes on the Invoice from the repair person. I accept that it will cost \$426.00 to replace based on the Invoice from the repair person. I also accept the evidence of the Tenant that the air conditioner is at least eight years old. Policy Guideline 40 indicates that the useful life of an air conditioner is 20 years. Considering the useful life, I find the Landlord is entitled to reimbursement in the amount of \$256.00.

I decline to award the Landlord reimbursement for the window screens given the lack of evidence provided on this item.

In total, I award the Landlord the following:

Item	Description	Amount
1	Cleaning	\$254.00
2	Cadaver neutralizing treatment	\$0.00
3	Repairs, maintenance and painting	\$122.00 (for painting costs included in item #3 and #4)
4	Repairs	\$256.00
	TOTAL	\$632.00

I decline to award the Landlord reimbursement for the filing fee given both parties were partially successful in their applications.

In summary, the Landlord must pay the Tenant \$875.00. However, the Tenant owes the Landlord \$632.00 in compensation for damage to the rental unit. Therefore, the Landlord must only return \$243.00 of the security deposit to the Tenant. The Tenant is issued a Monetary Order in this amount.

Conclusion

The Tenant's Application is granted. The Landlord must pay the Tenant \$875.00.

However, the Landlord's Application is granted in part. The Tenant owes the Landlord \$632.00 in compensation for damage to the rental unit.

Therefore, the Landlord must only return \$243.00 of the security deposit to the Tenant. The Tenant is issued a Monetary Order in this amount. If the Landlord does not return

the \$243.00, this Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: October 09, 2018

Residential Tenancy Branch