



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 19, 2018 wherein the Landlord requested monetary compensation from the Tenants, authority to retain the Tenants' pet damage and security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on October 12, 2018.

Both parties called into the hearing and 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 Matters

The parties confirmed their email addresses during the hearing. The parties further 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?
2. What should happen with the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement providing that this fixed term tenancy began October 1, 2016 and was set to end on October 31, 2017.

The Landlord completed a Monetary Orders Worksheet upon which she detailed her monetary claim as follows:

Loss of rent	\$1,700.00
Cleaning and junk removal	\$900.00
Replacement of dead bolts	\$94.86
Repairing damage to walls	\$52.69
Replacing closet doors	\$159.04
Half a day's labour for repairs	\$125.00
Registered mail costs (x2)	\$55.02
Filing fee (x2)	\$200.00
Estimate to repair deck	\$50.00
TOTAL CLAIMED	\$3,336.31

In terms of the claim for loss of rent, the Landlord testified that the Tenants gave 18 days' notice to end their tenancy on June 30, 2017. Introduced in evidence was a copy of the email provided to the Landlord on June 12, 2017 confirming the Tenants' intention to vacate the rental unit by June 30, 2017.

The Tenants paid a security deposit of \$850.00 and a pet damage deposit in the amount of \$100.00. The Landlord advised that pursuant to a previous Decision of the Residential Tenancy Branch (the file numbers are noted on the unpublished cover page of this my Decision) the Landlord was entitled to retain \$100.00 of the Tenant's pet damage deposit as recovery of the filing fee such that the Landlord continues to hold the sum of \$850.00.

The Landlord confirmed that the rental unit was re-rented as of August 1, 2017. In the within action she sought monetary compensation in the amount of \$1,700.00 for loss of rent for the month of July 2017.

The Landlord claimed cleaning costs in the amount of \$900.00. She testified that she sought the sum of \$75.00 an hour pursuant to clause 13 of the addendum to the tenancy agreement which reads as follows:

13) TRASH: At the Tenants sole expense, the Tenant agrees to properly dispose of all trash, rubbish, garbage, and other waste at reasonable and regular intervals and to comply with trash and recycling procedures. Tenants shall pay out of their deposit, any extra trash charges, or dump run charges, including reimbursement for owner's time at a rate of \$75 dollars per hour.

The Landlord testified that she spent significantly more time cleaning the rental unit (approximately 20 hours); however, she only claimed \$900.00 on her application.

The Landlord submitted photos in evidence which showed small amounts of dirt on the floors, a water stain and photos of various rooms titled "gift left in each room" which the Landlord indicated was a photo of a piece of tissue paper.

The Landlord testified that the Tenants did not return the keys to the rental unit and as such she had to replace the locks and the deadbolts; she sought compensation for these related costs.

The Landlord stated that the closet door was damaged, as were the tracks. She confirmed that she hired a contractor to replace the doors and make other minor repairs. She sought the replacement cost of the door as well as the associated labour costs.

The Landlord also sought monetary compensation for the cost to paint over wall damage caused by the Tenants. Submitted in evidence were photos depicting screw holes and other minor scuffs on the walls.

In response to the Landlord's claims, the Tenant, F.T., testified as follows.

E.T. stated that she gave notice to end her tenancy for medical reasons.

In terms of the Landlords' claim for \$900.00 for cleaning the Tenant alleged that they hired cleaners for two days. She also stated that the Landlord was very pleased with the condition of the rental unit when they moved out. She claimed that she took photos,

however she did not have any photos of the rental unit at the time of the hearing as she was forced to sell her computer for financial reasons.

In terms of the Landlords' claim that they did not return the keys the Tenant said that she "tried" to but the Landlord gave her a "cease and desist".

The Tenant confirmed they were agreeable to compensating the Landlord the replacement cost for the closet doors in the amount of **\$159.04**. The Tenant stated that they were also agreeable to paying 50% of the \$125.00 claimed for labour costs, as they agree to compensate the Landlord for the labour associated with replacing the closet doors, for a total of **\$62.50**.

In terms of the Landlord's claim for compensation for damage to the wall the Tenant stated that the walls were not damaged and any pin holes and scuff marks were simply "reasonable wear and tear".

The Tenant denied damaging the deck.

The Tenant stated that they asked for a date to do the move out condition inspection and the Landlord never arranged a date.

In reply to the Tenants' submissions the Landlord confirmed that she did not serve a "Notice of Final Opportunity to Schedule a Condition Inspection" Form RTB-22.

The Landlord stated that the Tenants' claim that they could not return the keys was completely false, the Landlord stated that she insisted that the male tenant not attend alone due to threats he had made to her. Introduced in evidence was a copy of an email from the Landlord to the Tenant dated June 29, 2017 wherein the Landlord confirmed that she would deal with the female (F.T.) only. In this email the Landlord asks to conduct the move out inspection on the Saturday. She also makes a formal request for the Tenants' forwarding address for the purposes of the deposit.

The Landlord stated that she had the deck redone before the tenancy began in October 2016. She submitted in evidence photos which depict damage to the deck. The Landlord confirmed that she has not had the deck fixed as of the time of the hearing.

Analysis

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

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.

A tenant may end a tenancy provided they do so in accordance with section 45 of the *Act*:

- 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*].

[Emphasis added in ***bold italics***]

As this was a fixed term tenancy, the earliest the Tenants could end their tenancy, pursuant to section 45(2)(b), was the end of the fixed term, October 31, 2017. A tenant in a fixed term tenancy agreement is potentially liable for the payment of rent for the duration of the fixed term. In this case, I accept the Landlord's evidence that the rental unit was re-rented as of August 1, 2017; accordingly, I award the Landlord the **\$1,700.00** claimed for loss of rent for July 2017.

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.

Pursuant to section 23 and 35 of the *Act*, a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. The procedure required for the scheduling of an inspection is set out in sections 16 and 17 of the *Regulations* as follows:

Scheduling of the inspection

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the Landlord failed to follow the above procedure when scheduling the move out inspection and failed to serve a "Notice of Final Opportunity to Schedule a Condition Inspection" Form RTB-22.

Such reports, *when completed in accordance with the Act and the Regulations*, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the

deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

The move out inspection report provided in evidence was completed by the Landlord alone and is therefore merely a record of her observations. It is not a report contemplated by section 21 of the *Regulations* and therefore has minimal evidentiary value.

The photos submitted by the Landlord showed small amounts of debris on the floor. One photo depicts what appears to be a water stain. The others are of single pieces of tissue left in various rooms. Aside from the photo of the damaged closet door, these photos do not indicate the rental unit was left unclean and damaged. The Landlord's testimony that she spent more than 20 hours cleaning is not supported by the photos she provided.

Without a properly completed move out condition inspection report or compelling evidence as to the condition of the rental I am unable to find that the rental unit required cleaning as claimed by the Landlord. **I therefore dismiss the Landlord's claim for cleaning costs.**

The Tenant conceded that the keys were not return stating that she believed she was not able to communicate with the Landlord. The email from the Landlord which was introduced in evidence made it clear the Landlord wanted to restrict communication with the male Tenant. Further, the Tenants could have sent their keys to the Landlord by mail. In any event, they failed to return the keys as required by section 37(2)(b) of the *Act* and I therefore find the Landlord is entitled to the **\$94.86** claimed for the cost of replacing the deadbolts.

Although the Landlord's Agent testified that the walls were damaged at the end of the tenancy, the photos submitted by the Landlord depict a few screw holes and minor scuffs; I agree with the Tenant that this is indicative of reasonable wear and tear, not damage. Further, the Tenants alleged that the walls were in the same condition at the start of the tenancy, save and except for minimal wear and tear. I find the Landlord has submitted insufficient evidence to support her claim for repair of the walls and **I therefore dismiss her claim for compensation for wall repair.**

The Tenant confirmed they were agreeable to paying the cost of replacing the closet doors as well as half of the labour claimed by the Landlord. I therefore award the

Landlord the **\$159.04** claimed for the doors, and **\$62.50** for the labour costs. The Landlord failed to provide details as to the balance of the labour costs claimed and as such I dismiss her claim for the balance of \$62.50.

Registered mail costs are not recoverable under the *Residential Tenancy Act* and I therefore dismiss the Landlord's claim for \$55.02.

The Landlord was awarded compensation for the filing fee for her previous application and was granted authority to retain \$100.00 from the Tenants' security deposit.

The Landlord claimed the Tenants damaged the deck. The Tenants deny this. Although the Landlord submitted a photo of the scratches in the deck, I am unable, based on the evidence before me, to find that the Tenants caused this damage.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Further, the Landlord provided an estimate of the cost to repair the deck, yet has not incurred this cost. I find she has failed to prove she suffered any financial loss in this respect. **I therefore dismiss the Landlord's claim for the estimated cost of the deck repair.**

As the Landlord has been partially successful in her claim I find she is entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is granted monetary compensation in the amount of **\$2,116.40** for the following:

Loss of rent	\$1,700.00
Replacement of dead bolts	\$94.86
Replacing closet doors	\$159.04
Labour to repair doors	\$62.50
Filing fee	\$100.00
TOTAL AWARDED	\$2,116.40

The Landlord may retain the Tenants' \$850.00 security deposit towards the amount awarded and is granted a Monetary Order for the balance due in the amount of **\$1,266.40**. This Monetary Order must be served on the Tenants and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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: November 9, 2018

Residential Tenancy Branch