



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("*Act*"). The landlord applied for a monetary order for unpaid rent or utilities, for damage to the unit, site or property, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord, the tenant and the tenant's grandparents appeared at the teleconference hearing. The landlord and tenant gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

The tenant confirmed that they had received the landlord's documentary evidence and that they had the opportunity to review that evidence. The tenant also confirmed that she did not serve any documentary evidence in response to the landlords claim. I find the tenant was sufficiently served under the *Act* as a result.

Preliminary and Procedural Matters

At the outset of the hearing, the name of the male tenant DB was removed as a respondent as the landlord did not serve the male tenant with the application. In addition, it appears the landlord created a separate tenancy agreement with DB. This amendment was made in accordance with section 64(3) of the *Act*.

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A tenancy between the parties began on May 1, 2018 and ended on July 31, 2018 based on an undisputed 1 Month Notice to End Tenancy for Cause ("1 Month Notice"). The tenant vacated the rental unit on the effective vacancy date listed on the 1 Month Notice, which was July 31, 2018. During the tenancy, monthly rent was \$460.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$230.00, which the landlord continues to hold.

The landlord stated that an incoming Condition Inspection Report ("CIR") was not completed at the start of the tenancy. The landlord testified that she posted a Final Opportunity to Attend the Condition Inspection at the end of the tenancy on July 29, 2018 and the tenant failed to attend for the inspection. The landlord testified that on July 31, 2018, the landlord completed the outgoing CIR without the tenant present as a result.

The landlord has claimed for \$2,962.27, comprised of the following which contains the landlord's error for August rent in item 8 below:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning 1	\$90.00
2. Cleaning 2	\$220.00
3. Carpet cleaning and other cleaning 3	\$480.00
4. Painter	\$250.00
5. Paint	\$45.90
6. Change keys as no keys returned	\$168.37

7. 2 new doors installed	\$288.00
8. Deductible for flooring repair	\$500.00
9. Loss of rent for August 2018	\$920.00
TOTAL	\$2,962.27

I note that while the landlord is also seeking to retain the security deposit, the landlord added that amount to the claim. I find that that amount would actually be deducted as the landlord has \$230.00 from the tenant as a security deposit. Therefore, if the landlord is successful with more than the \$230.00 amount, I will offset the tenant's security deposit from the landlord's monetary claim. This will be addressed later in this decision.

Regarding item 1, the landlord has claimed \$90.00 for PC to clean the rental unit. The landlord stated that there were a total of three cleaners. As a result, this is the part 1 of 3 for cleaning costs. The landlord referred to an email from PC submitted in evidence in the amount of \$90.00. In that email from PC it states that PC spent 4.5 hour cleaning at \$20.00 per hour for a total of \$90.00. In addition, that email states that that 12 bags of garbage were gathered, four large bags were outside on the deck when they arrived, and that dryer lint was thrown on the floor and that food was still in the fridge after the tenant vacated the rental unit. There is no dispute that the tenant was the last to vacate the rental unit. The landlord stated that the tenant left the rental unit in a very dirty condition. The email also indicates that the carpet was full of balls of cat hair and extremely dirty and that the cleaner could not remove her shoes due to the filth. The email also makes reference to the gutter being used as a giant ashtray that was full of cigarette butts.

The tenant's response to item 1 was that she was not the only tenant but did not deny that she was the last tenant to occupy the rental unit.

Regarding item 2, the landlord has claimed \$220.00 for RR to assist with cleaning the rental unit. RR submitted an email in evidence which reads in part:

I have been working in the past as a professional home cleaner...
 I arrived on Thursday, [August] 2 at 9:30 and stayed until 4pm that day. I worked with [the landlord] and one other parson to clean up the apartment.
 Specifically, I did the following:

1. Help clean up all the garbage that was in every room in the apartment – we had to remove the garbage to avoid stepping on it.

2. Cleaned the window sills and windows in the two bedrooms
3. Washed the walls and door frames in the two bedrooms
4. Vacuumed the entire apartment, I had to empty the vacuum several times due to the dirt collected.
5. Hand-scrubbed floors in kitchen and entry way due to heavy stains.

Hours: 5.5 hours (30 minute break for lunch)

On Monday, August 5, I returned and worked from 10 am until 3pm. I did the following:

1. Washed the walls in the front room – One wall in the living room had 2 severely marked up, large spots that required substantial cleaning and time involvement.
2. Took down the blinds and washed them and put them back up in all of the rooms.
3. Cleaned the windows and window sills in the living room and kitchen.

Hours: 5.5 hours (30 minute break for lunch)

Total hours: 11 x \$20 hour = \$220

[Corrected July date to August which was an obvious error]

Regarding item 3, the landlord has claimed \$480.00 for carpet cleaning and the remainder of the cleaning of the rental unit by JZ. JZ writes in an email submitted in evidence the following:

I am a professional cleaner, employed full time at a Courtenay business. I was asked by [the landlord] to assist in cleaning a condo she owns after tenants moved out.

During six trips to the condo in August, I did the follow clean up tasks:

1. Shampooed the carpets, washed all of the floors which had to be scrubbed and washed by hand as they were so dirty. 4 hours
2. Kitchen: Cleaned the inside and outside of the kitchen cabinets and had to start by emptying all of the leftover items in the drawers and cupboards. This took a lot of time, as there were spills in the drawers and food on the outside

- of the cabinets. 3.5 hours. Stove and Oven – I had to use an entire can of oven cleaner to clean the inside of the oven, it was so dirty. Time to clean the oven, stove top and hood above was 3.5 hours.
3. Outside deck, cleaned out hundreds of cigarette butts in the gutter which took a lot of time as I had to reach outside the balcony railings to do this. I continued to wash the windows, inside and outside of the deck and the floor. Time: 3 hours.
 4. Washed walls in the hallways and the front room. Time 2 hours.
 5. Cleaned out the bathroom which took a long time. It was filthy. I had to clean the toilet numerous times, as well as the cabinets, the tub and walls of the shower. Washed the walls. Time 3.5 hours.
 6. The carpets had to be replaced due to the damage done by the tenants, and I came back to do a cleanup of the floors and to replace the burnt out lightbulbs in the light fixtures. Time: 3 hours.
- Total time: 24 hours x \$20 per hour = \$480.00

This account has been paid in full.

The landlord referred to photo evidence, which supports that the cleaner had a shampooer and the tenant had no response to this portion of the landlord's claim.

Regarding items 4 and 5, the landlord has claimed \$250.00 for repainting costs for item 4 and \$45.90 for paint for item 5 which was dismissed during the hearing as the landlord failed to provide an incoming CIR, before photos and admitted that the paint was done three years prior. I find the landlord has failed to meet the burden of proof for items 4 and 5, which I will describe later in this decision.

Regarding item 6, the landlord has claimed \$168.37 for the cost to rekey the rental unit. The tenant admitted that she lost her keys. The landlord submitted an invoice in the amount claimed in support of this portion of their claim.

Regarding item 7, the landlord has claimed \$288.00 to replace two doors which the landlord stated was from the tenant's cat. The tenant denied that the cat was hers. I find this item fails as the landlord failed to provide an incoming CIR or before photos to support that the doors were not already scratched when the tenant moved into the rental unit where there were other tenants already residing in May of 2018. I will describe my reasons further later in this decision. In addition, I note that the landlord

stated the doors were about were the same doors when she bought the condo about 15 years prior.

Regarding item 8, the landlord has claimed \$500.00, which is the amount the landlord stated was the deductible paid to the insurance company to repair the flooring. The landlords claims the carpets were three years old before the tenancy began; however, failed to submit a receipt, before photos or an incoming inspection completely with the tenant. The tenant testified that when she moved in, the carpets were already marked up throughout the unit. The landlord stated there was only one stain when the tenant moved in. The tenant stated that there were so many tenants that lived there that how could the landlord determine it was her. The tenant denies that she damaged the carpets. The landlord had entered into a separate tenancy agreement with a male tenant for the same rental until that eventually, tenants shared; however, under separate tenancy agreements.

Regarding item 9, although the landlord claimed \$920.00 for loss of August 2018 rent due to the condition the rental unit was left in, the landlord did confirm the tenancy agreement lists the monthly rent for this tenant as \$460.00 per month. The landlord stated that the flooring had to be replaced due to the severe damage to the carpets which the landlord stated her insurance company only covered as the damage appeared to be on purpose as it was so bad.

Analysis

Based on the documentary evidence and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Items 1, 2 and 3 - The landlord has claimed \$90.00 for PC, \$220.00 for RR, and \$480.00 for JZ to clean the rental unit. Based on the emails before me, I find the tenant's response to be lacking for several reasons. Firstly, the tenant was the last tenant to occupy the rental unit. Section 37 of the *Act* applies and requires that the rental unit be left in reasonably clean condition, less any wear and tear. I find the tenant vacated the rental unit with the rental unit in a dirty condition that required significant cleaning. Therefore, I find the tenant breached section 37 of the *Act* and that the tenant is responsible for items 1, 2 and 3 as claimed. I also note that by the tenant having no comment for item 3 that I take "no comment" as the tenant not disputing the amount claimed. I find the landlord has met the burden of proof for items 1, 2 and 3 as a result. I grant the landlord **\$90.00, \$220.00 and \$480.00** as claimed for items 1, 2 and 3, respectively.

Item 4 and 5 – As described above, the landlord has claimed \$250.00 for repainting costs for item 4 and \$45.90 for paint for item 5 which were dismissed during the hearing as the landlord failed to provide an incoming CIR, before photos and admitted that the paint was done three years prior. I find the landlord has failed to meet parts one and two of the test for damages or loss. Therefore, as the landlord has the onus of proof, I dismiss items 4 and 5 due to insufficient evidence, without leave to reapply.

Item 6 - The landlord has claimed \$168.37 for the cost to rekey the rental unit. The tenant admitted that she lost her keys. The landlord submitted an invoice in the amount claimed in support of this portion of their claim. Section 37 of the *Act* also requires the tenant to return the rental unit keys to the landlord at the end of the tenancy which I find the tenant failed to do. Therefore, I find the tenant breached section 37 of the *Act* again, and owes the landlord **\$168.37** as claimed for this item.

Item 7 - The landlord has claimed \$288.00 to replace two doors which the landlord stated was from the tenant's cat. The tenant denied that the cat was hers. I find the landlord has failed to meet the burden of proof as the landlord failed to complete an incoming CIR with this tenant, and failed to submit any before photos to support that the doors were not already scratched when the tenant moved in. I find the landlord failed to

meet parts one and two of the test for damages and loss accordingly. This item is dismissed without leave to reapply, due to insufficient evidence.

Item 8 - The landlord has claimed \$500.00, which is the amount of the deductible paid to the insurance company to repair the flooring, according to the landlord. As the landlord failed to provide any receipts to support that the flooring was only three years old, failed to submit any before photos and given that the tenant claims there was damage to the flooring when she moved into the rental unit, I find the landlord has failed to prove that the flooring damage was the responsibility of this tenant. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence, without leave to reapply.

Item 9 – Due to the tenant breaching section 37 of the *Act* twice by leaving the rental unit in a reasonably clean condition and failing to return the rental unit keys, I find the landlord suffered a loss of August 2018 rent in the amount of \$460.00. Therefore, I find the tenant is responsible to compensate the landlord that amount. As I find the landlord has met the burden of proof, I award the landlord **\$460.00** for this item.

The landlord continues to hold the tenant's security deposit \$230.00, which has accrued \$0.00 since the start of the tenancy.

As the landlord's application had merit, I grant the landlord **\$100.00** in full recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlord has established a total monetary claim in the amount of **\$1,518.37** comprised of \$90.00 for item 1, \$220.00 for item 2, \$480.00 for item 3, \$168.37 for item 6, \$460.00 for item 9, plus the \$100.00 filing fee. I find that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's \$230.00 security deposit. Therefore, I authorize the landlord to retain the tenant's full security deposit of \$230.00 in partial satisfaction of the landlord's monetary claim.

I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$1,288.37**.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$1,518.37. The landlord has been authorized to retain the tenant's full security deposit of \$230.00 in partial satisfaction of their claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of \$1,288.37. This order must be served on the tenant by the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 24, 2018

Residential Tenancy Branch