



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASC PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FFT
 MNDL-S, FFL

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed on August 22, 2018, the Tenants requested return of the security deposit paid and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on August 28, 2018, the Landlord requested the following relief: monetary compensation from the Tenants for cleaning and repairs to the rental unit; authority to retain the security deposit; and, to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 14, 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 Tenant B.B. called in on his own behalf and as agent for the Tenant, T.B. The Landlord was represented by the Property Manager, L.M. and the Building Manager, D.D.

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 both parties 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 either party recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began November 1, 2016. The rental unit is a one bedroom unit in a rental building for which the Tenant paid rent of \$920.00 per month. The Tenants also paid a security deposit of \$460.00. The tenancy ended on July 31, 2018.

The Tenant confirmed that the Landlord performed a move in and move out condition inspection. The report confirms that the Tenants did not provide their forwarding address at the time of the move out inspection.

The Tenants did not provide any evidence to support a finding that they provided their forwarding address in writing to the Landlord.

The Tenant applied for dispute resolution on August 22, 2018 and the Landlord applied on August 28, 2018.

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

Painting/damage	\$134.17
20% administration fee on painting	\$25.83
Painting materials estimate	\$75.96
Carpet cleaning	\$73.50
20% administration fee on carpet cleaning	\$14.70

Suite cleaning	\$280.00
20% administration fee on suite cleaning	\$56.00
Blind cleaning	\$16.44
20% administration fee on blind cleaning	\$3.29
TOTAL CLAIMED	\$680.91

L.M. testified on behalf of the Landlord. She confirmed that the cleaning, carpet cleaning and blind cleaning were done by the same company and the dates on the receipts are merely when the invoice was prepared, not when the services occurred; she confirmed that all related cleaning was done on the date of move out: July 31, 2018.

L.M. stated that the entire building was painted in September of 2016 and was a brand new building when all the Tenants moved in November 2016. L.M. stated that they sought the cost of painting due to damage to the wall from large bolts and dents caused by the Tenants. She also noted that the time sheet was when it was entered, not when the painting occurred, as the painting occurred in the first week of August.

L.M. stated that all of the counters, walls, counters, trim, all of the appliances, the patio, the filters in the heating ventilation and air conditioning unit needed to be cleaned at the end of the tenancy. She claimed that the Tenants swept the apartment but did not do any further cleaning.

L.M. also stated that the blinds in the kitchen, living room, and dining area all needed to be cleaned such that the Landlord sought the associated cost.

L.M. confirmed that the 20% administration fee was for their "time dealing with this".

L.M. stated that the Tenant did not provide their forwarding address in writing at the time of move out. She further stated that when she received the Tenants' Application for Dispute Resolution they were able to file their application as the Tenants' address was provided on the Tenants' Application.

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

The Tenant confirmed that they did not clean the carpets when they moved from the rental unit. The Tenant noted that no photos were provided of the carpet to show that carpet cleaning was required but that in any event, they weren't really disputing the amount claimed by the Landlord for carpet cleaning.

The Tenant confirmed that they disputed the \$10.00 claim for blind cleaning. He stated that they did not clean the blinds as the box on the move out inspection was ticked as being satisfactory. He submitted that there were several spots for blinds/drapes on the inspection report, yet some of those areas did not even have blinds including the stairwell and bathroom. The Tenant also noted that the Landlord provided a copy of a receipt for the blind cleaning dated October 3, 2018 (some two months after the tenancy ended).

The Tenant disputed the \$320.00 claimed by the Landlord for cleaning of the rental unit. He stated that he believes, based on the condition of the rental unit, as well as the photos submitted by the Landlord, that the amount claimed (8 hours) was excessive. He also noted that the receipt was dated August 29, 2018 (a month after they moved out) and that the address of the cleaning company was the same as the Landlord's.

In terms of the Landlord's claims for the \$200.00 cost of painting, the Tenant noted that the Landlord provided a quote for a gallon of paint. He noted that there was no proof that the paint was actually purchased. The Tenant also noted that the time card for the painting has entries for August 14 and 30, although there is no notation to prove where the work was done.

The Tenant also disputed the 20% administration fee claimed by the Landlord.

Analysis

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

I will first deal with the Landlord's claim for monetary compensation.

In this section reference will be made to the *Residential Tenancy Act, Regulation*, and *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at: 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.

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.

Although section 21 of the *Residential Tenancy Regulation* affords significant evidentiary weight to condition inspection reports, I am unable to give the reports

provided in evidence such evidentiary significance. The Landlord's agent testified that the rental unit was new at the start of the tenancy; despite this, the report indicates "S", which corresponds with the code "stained", on all areas related to the tenancy at its start. Similarly, at the end of the tenancy the report writer has simply marked "C", which corresponds with "needs cleaning" on all areas, save and except for one notation of "Satisfactory" with respect to the blinds in the entry way and the light fixture in the bedroom. I also accept the Tenant's submissions that some of the areas marked for blinds refer to areas where there aren't any windows.

Condition Inspection Reports are to be completed by the landlord and tenant at the time the tenant moves in and out of the rental unit. They afford both parties the opportunity to review each item noted and make detailed notes as to their condition. When the report writer simply draws a line down the entire report, or repeats the same notation in each box irrespective of whether such item exists, the result is that the report loses its value.

The Tenant confirmed they were not really disputing the amount claimed for carpet cleaning.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to carpets:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

I find that the carpets were not cleaned as required and I therefore award the Landlord the **\$73.50** claimed for carpet cleaning.

The photos submitted by the Landlord indicate the rental unit required some cleaning at the end of the tenancy. The interior of the refrigerator and the cooking stove appeared as though they were not cleaned. As well, the some photos show dirt and debris in the cabinet drawers and the floor as well as marks on the walls and other surfaces. While some cleaning was clearly required, I find the Landlord's claim to be excessive. I find a more reasonable figure to be five hours of cleaning at \$20.00 per hour, for a total of **\$100.00** and I therefore grant the Landlord this sum.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to walls and painting:

WALLS

Cleaning: The tenant is responsible for washing scuff marks, finger prints, etc. off the walls unless the texture of the wall prohibited wiping.

Nail Holes:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.

BASEBOARDS AND BASEBOARD HEATERS

The tenant must wipe or vacuum baseboards and baseboard heaters to remove dust and dirt.

The photos submitted by the Landlord show some minor marks and scuffs on the walls. These photos do not support a finding that the walls were damaged or that the Tenants used an excessive number of nail holes or large nails or screws which damaged the walls.

Additionally, *Residential Tenancy Branch Policy Guideline 40* provides that interior paint has a useful life of four years; as this tenancy was a year and a half, any painting costs would be discounted by 37.5% even in the event I had found the Tenants to be responsible for some of the painting costs.

I find that the condition of the walls was a result of reasonable wear and tear and I therefore dismiss the Landlord's claim for painting costs.

The Tenant disputed the amounts claimed for blind cleaning. I was not provided any photos of the blinds to support a finding that such cleaning was required. In all the circumstances I find the Landlord has failed to meet the burden of proving this expense was incurred.

I decline the Landlord's request for a 20% administration fee on all amounts claimed. I find the Landlord has failed to provide sufficient evidence to support a finding that this is an actual loss suffered by the Landlord. Further, section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Residential Tenancy Act*. I conclude that this exclusion is intentional and includes such administration costs.

I find that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address on their Application for Dispute Resolution. I therefore find the Tenants are not entitled to return of double the deposit pursuant to section 38(6) of the *Act*.

As the parties have enjoyed divided success I find they should each bear the cost of their own filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$189.94** for the following:

Carpet cleaning	\$73.50
Suite cleaning	\$100.00
Blind cleaning	\$16.44
TOTAL CLAIMED	\$189.94

The Landlord may retain \$189.94 of the Tenants' security deposit; the balance of \$270.06 must be returned to the Tenants.

In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$270.06**. The Tenants must serve this Order on the Landlord and may file and enforce it 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: January 10, 2019

Residential Tenancy Branch