



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 1, 2018 wherein the Landlords sought monetary compensation from the Tenant for damage to the rental unit, authority to retain her security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on December 3, 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 Tenant?
2. What should happen with the Tenant's security and pet damage deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began June 1, 2013. The Tenant paid a \$250.00 security deposit and a \$250.00 pet damage deposit.

The Tenant gave notice to end the tenancy effective July 31, 2018, although the Landlord stated that she moved from the rental unit on July 17, 2018. At the time the tenancy ended she had resided in the rental unit approximately five years.

The Landlord testified that the rental unit was painted right before the tenancy began.

He also confirmed that the carpets were approximately two years old when the tenancy began.

On the Monetary Orders Worksheet filed in evidence the Landlord indicated he sought monetary compensation for the following:

Paint brush	\$5.00
Painter's tape	\$3.90
Painter's tape	\$4.75
Various as set out in letter of July 25, 2018 to Tenant	\$726.76
Paint	\$36.75
Carpet cleaning	\$140.00

The \$726.76 claimed above was detailed in a letter to the Tenant dated July 25, 2018. Although that letter was not before me in evidence the Tenant confirmed receipt of the letter and each party made submissions on the enumerated list. The Landlord confirmed he sought the sum of \$726.76 for the following:

1.	Labour for painting of two walls in bedroom scratched by cat	\$50.00
2.	Fixing mdf moulding	\$30.00

3.	Damage to wall by baseboard (material: \$15.00 and \$75.00 labour)	\$90.00
4.	Landlord repair to damage of bathroom outer-wall and tiles (estimate)	\$450.00
5.	Fix curtain rod holes including labour and painting	\$35.00
6.	Painting living room wall at corner which was damaged by pet	\$35.00
7.	Labour and replacement of living room blind	\$40.00
8.	Filling in painting wall behind refrigerator	\$80.00
9.	Painting drywall beside cooking range	\$20.00
10.	Replacement of exterior door handle	\$40.00
11.	Replacement of entrance door weather stripping (material and labour)	\$40.00
12.	Replacement of missing kitchen sink drain plug	\$15.00
13.	Fixing detached refrigerator drain pipe	\$20.00
14.	Remove three pet stains from carpet	\$50.00
15.	Cleaning of dust and dirt at door sill and living room window well, kitchen floor, cooking range burners, washroom window and sill, washroom window well, shower room ceiling fan, toilet bowl and seat, and removing smell from washroom sink (four hours at \$30.00 per hour)	\$120.00
TOTAL		\$726.75

In response to the Landlord's claims the Tenant testified as follows.

The Tenant confirmed that she did not have the carpets cleaned at the end of the tenancy. She noted that it was part of her tenancy agreement that she allow the Landlord to clean the carpets. She stated that while she agreed to this, she was waiting for a receipt to confirm the amounts paid and to this date he still hasn't provided it.

The Tenant stated that she fixed all the damage caused by herself and her pet. She also testified that she had five friends help her clean including removing the fridge and stove and cleaning behind them, despite the Landlord's claim that it wasn't done. She stated that she cleaned the rental unit to a reasonable standard such that she disputed the amounts claimed by the Landlords. In support the Tenant also provided two videos taken of the rental unit after it was cleaned.

The Tenant also claimed that the photos submitted by the Landlord do not depict the state of the rental unit when she moved out. She noted that the photos were not dated such that she does not know when they were taken. She submitted that her video of

the rental unit was taken around the time of the move out and is therefore more indicative of the condition of the rental unit at that time.

The Tenant also noted that the Landlord hadn't painted in the five years she was a tenant and as such painting was required in any event of the tenancy. She also noted that scratches were professionally filled in and sanded and were ready to be painted.

The Tenant confirmed that the moulding in the bedroom was damaged, but had no idea how that happened.

The Tenant stated that she did not initially have access to the back bedroom such that there was no inspection or documentation as to the condition of the room prior to her having access to the room. She noted that the Landlord had access to this room because the breaker box was in there and therefore he was in there a lot. She disputed any claim for cleaning or repair of that room due to the fact she did not use it.

The Tenant stated that the Landlord's claims relating to a hole by the baseboard was actually caused by a rodent and which was also confirmed in a May 2018 inspection report.

The Tenant further stated she has no idea what the Landlord is talking about with respect to the bathroom "outer-wall and tiles". She denied trying to fix it and has no idea what he is talking about.

In terms of the curtain rod holes at each side of the bathroom wall, the Tenant stated that her curtain rod holder had rubber ends and did not need holes. She also stated that the video she provided in evidence also shows no holes.

The Tenant stated that the exterior door handle dents were there when she moved in. She also stated that the weather stripping damage was there when she moved in.

The Tenant stated that the Landlord removed the kitchen sink plug years ago and never replaced it.

The Tenant stated that she only had that refrigerator for a short while as she was provided the other renters fridge as they wanted a new one. She also stated that it is not actually a drain pipe which she claimed was shown in the video. She also stated that if there was.

The Tenant stated that she had no idea about the wasps in the bathroom fan as she was not allowed to touch it. She stated that she was also not allowed to touch the bathroom window or the heaters because the windows were hooked up to the Landlord's alarm. The Tenant further noted that the tenancy agreement provided that she was not even allowed to have a plunger. The tenant stated that he was very specific about that and she didn't want to mess that up.

Analysis

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.

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

The Tenant confirmed that she did not have the carpets steam cleaned when she moved from the rental unit. *Residential Tenancy Branch Policy Guideline 1* provides in part as follows with respect to a tenants' responsibility with respect to carpets:

"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 therefore find the Landlord is entitled to the **\$140.00** claimed for the cleaning of the carpets at the end of this tenancy.

The majority of the Landlord's monetary claim relates to painting of the rental unit. *Residential Tenancy Branch Policy Guideline 40* provides that interior paint has a useful building of 5 years. I accept the Tenant's evidence that the Landlord did not paint during the tenancy such that I find painting, of the walls and moldings, would have been required in any event at the end of this tenancy.

I also find, based on the video provided by the Tenant, that the walls were repaired by the Tenant and ready for painting at the end of the tenancy. Although the photos by the Landlord showed some scratching on the walls, I note that the Landlord also submitted photos of the rental unit taken during the tenancy such that I find it likely the wall photos were taken prior to the Tenant making the required repairs.

Guideline 1 also provides the following guidance with respect to 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.

Based on the above, I dismiss the Landlord's claim for any costs associated with painting the walls or molding in the rental unit. Additionally, I accept the Tenant's evidence that the mdf molding was damaged by rodents and I therefore find she is not responsible for the associated repair costs.

The Landlord claimed compensation for the estimated cost to repair the bathroom outer-wall and tiles; the basis of his claim is that the Tenant damaged the wall and then attempted to make repairs, which were unsuccessful and required further work. The Tenant denied any knowledge whatsoever of this. The Landlord failed to submit photos or any other documentary evidence with respect to this item. In all the circumstances, I find the Landlord has failed to submit sufficient evidence to support a finding that the Tenant caused any such damage, or that he incurred the cost to make such repairs. I therefore dismiss this portion of his claim.

I am persuaded by the Tenant's video evidence that the rental unit was cleaned to a reasonable standard at the end of the tenancy and I therefore dismiss the Landlord's claim for \$120.00 for additional cleaning.

The Landlord claimed the Tenant installed curtain rods leaving holes in the walls. The Tenant denied owning such a rod or that she made such holes in the walls. I am unable to reconcile this discrepancy based on the evidence before me, and therefore find the Landlord has failed to meet the burden of proving the Tenant damaged the wall as claimed. The Landlord's claim for related compensation is therefore dismissed.

The photos submitted by the Landlord confirm that the blind was damaged at the end of the tenancy. I therefore award the Landlord the **\$40.00** claimed for its replacement.

The Landlord claimed the Tenant damaged the exterior door knob. Photos submitted by the Landlord show minor denting on the knob , which I find to be reasonable wear and tear. There was also insufficient evidence to support a finding that the door knob required replacement at the end of the tenancy. This claim is also dismissed.

I accept the Landlord's evidence that the Tenant's pet damaged the weather stripping on the door and I award him the **\$40.00** replacement cost.

I accept the Landlord's evidence that the kitchen sink drain plug was missing at the end of the tenancy. I find it more likely it went missing during the tenancy and as such find the Landlord is entitled to recover the **\$15.00** replacement cost.

The Landlord claimed \$20.00 for reattaching the refrigerator drain pipe. I find it likely that this pipe became dislodged when the Tenant, or her friends, were cleaning the refrigerator. In any event, such reattachment would take minimal time and I therefore find the Landlord has failed to prove any associated loss. His claim for related compensation is therefore dismissed.

As I have awarded the Landlord \$140.00 for carpet cleaning, I dismiss his claim for \$50.00 for the removal of pet stains from the carpet as I find this would be included in the carpet cleaning.

I find the Landlord has been only partially successful in his claim and I therefore find he should bear the cost of his filing fee.

Conclusion

The Landlord is granted monetary compensation in the amount of ~~\$285.00~~ **\$235.00** for the following expenses:

Carpet cleaning	\$140.00
Labour and replacement of living room blind	\$40.00
Replacement of entrance door weather stripping (material and labour)	\$40.00
Replacement of missing kitchen sink drain plug	\$15.00
Remove three pet stains from carpet	\$50.00
TOTAL AWARDED	\$285.00 \$235.00

The Landlord may retain ~~\$285.00~~ \$235.00 from the Tenant's \$500.00 security and pet damage deposit and must return the balance of ~~\$215.00~~ \$265.00 to the Tenant.

In furtherance of this I grant the Tenant a Monetary Order in the amount of ~~\$215.00~~ \$265.00. She must serve this Order on the Landlord and may file and should he fail to pay as ordered she may enforce it in the B.C. Provincial Court (Small Claims Division) as an Order of that court.

his 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 2, 2019

Corrected: January 9, 2019

Residential Tenancy Branch