



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a Landlord's Application for Dispute Resolution, filed on August 8, 2018, wherein the Landlord requested \$5,770.00 in monetary compensation from the Tenants, authority to retain the security and pet damage deposit and to recover the filing fee. By amendment filed on October 15, 2018, the Landlords reduced their monetary claim to \$3,690.60.

The hearing was conducted by teleconference at 1:30 p.m. on December 7, 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

The Landlord's spouse, E.H., testified on behalf of the Landlord. He confirmed that the tenancy began June 1, 2017. Monthly rent was payable in the amount of \$2,600.00 and the Tenants paid a \$1,300.00 security deposit and a \$1,300.00 pet damage deposit for a total of \$2,600.00 (the "Deposits").

E.H. stated that they bought the home a year prior to renting it out. He further testified that they then renovated the entire home from "top to bottom" such that the entire rental unit was newly renovated at the start of the tenancy (save and except for the main bathroom which was off the main hallway as it had been renovated a year prior by the previous owners.)

The tenancy ended on July 31, 2018.

Introduced in evidence was a copy of the move in and move out condition inspection report.

E.H. confirmed that the original application was based on estimates, and once the work was completed the Landlord filed the amendment seeking the sum of \$3,960.60 for the following expenses:

| ITEM | COST |
|----------------------------------|----------|
| Replace garden hose | \$33.59 |
| Replace gas can | \$10.97 |
| Replace dining room area rug | \$43.57 |
| Master bedroom closet shelf | \$37.89 |
| Clean interior top floor | \$280.00 |
| Removal of yard junk and battery | \$276.15 |
| Replace garage door | \$150.00 |
| Replace hallway door | \$220.00 |

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| Repair and paint damaged walls | \$1,350.00 |
| Paint | \$324.79 |
| Yard clean up and damage | \$462.00 |
| Pet waste removal | \$26.25 |
| Power wash areas (deck and stairs) covered in pet hair | \$131.25 |
| Replace damaged door weatherproofing | \$22.37 |
| Repair pet damaged kitchen cabinet | \$4.69 |
| TOTAL DAMAGES CLAIM | \$3,540.00 |
| Filing fee | \$100.00 |
| Registered mail costs | \$25.10 |
| Registered mail costs | \$25.10 |
| TOTAL CLAIMED | \$3,690.60 |

The Landlord submitted photos of the rental unit and the items left by the Tenants at the end of the tenancy. E.H. confirmed that all the items depicted in the photos, save and except for a canopy, were left by the Tenants. The Landlord hired a junk removal company to remove these items and provided a copy of the receipt for this service in evidence.

In terms of the \$462.00 amounts claimed for landscaping and yard clean up, E.H. stated that the Tenants agreed to do the yard work as a term of their tenancy. He stated that it wasn't possible to have anyone else do the yard work as the Tenants had an aggressive dog, which deterred trades people from attending the rental unit and actually attacked E.H. at one time. The Landlord also left the lawnmower and gas can and the Tenants brought their own lawnmower. The Landlord stated that they did the yard work until the Landlord informed them that they would not be extending the lease at which time it became an "overgrown mess".

The Landlord also claimed the cost of junk removal in the amount of \$276.15. E.H. noted that this was less than the amount the Tenants were originally quoted.

The Landlord claimed \$280.00 for the cost to clean the main floor. The Landlord provided receipts in evidence for this cost as well as a photos of the rental unit, including one of the stove top and oven, a photo of drywall repair dust on the stairs, and some debris in a kitchen drawer. Although the Landlord provided three videos of the walk through, only one of which (the one marked "Part 3") was viewable.

E.H. claimed that he and his wife, the Landlord, spent approximately 100 hours of additional time cleaning and repairing the rental unit over and above the amounts claimed in the Application.

The Landlord also claimed the cost to replace various items removed by the Tenants including a garden hose, gas can and the garage door opener. E.H. also stated that there was also a rug in front of the sliding doors which was missing at the end of the tenancy; E.H. stated that he suspected this was due to the dog lying on it all the time and it was likely covered in hair. As well, the E.H. stated that the wire shelf in the master bedroom closet was removed at the end of the tenancy.

E.H. claimed that the police were called during the move out condition inspection as a result of threats being made by the Tenant, K.K. He stated that he and his wife were cowering in the rental unit waiting for the police to arrive due to their fear of the Tenant. E.H. also testified that the garage door was damaged during this time as they could hear K.K. kicking and throwing things.

E.H. also testified that K.K. also punched one of the bi-fold doors in the hallway and although it appeared as though the Tenants had attempted to repair the door, it was not repairable and needed to be replaced.

E.H. confirmed that the Tenants also attempted to repair the holes in the walls however they used paint which was not properly matched. The Landlord provided in evidence numerous photos of the walls depicting the wall damage, unpainted and patched areas, as well as areas where the repairs had been painted with paint which did not match.

The Landlord also claimed that the Tenants' pets damaged the rental unit, including leaving dog feces and dog hair everywhere, removal of the weather stripping off one of the doors as well as removal of part of the kitchen cabinet. Again, the Landlord provided photos to support these claims.

In response to the Landlord's claims, the Tenant, K.K., testified on behalf of the Tenants.

K.K. stated that they had not finished cleaning when the Landlord denied them access to the rental unit. He also claimed that they would have completed the repairs and cleaning had they had such access and that he was happy to clean the rental unit, and paint the entire wall but the Landlord would not talk to him at that point.

The Tenant stated that the shelf in the master bedroom closet was not removed, but moved up, and is therefore still there.

The Tenant confirmed that the carpet at the back door was “removed”. He said it was a 5x7 throw-mat which he believed was not very expensive and submitted that the Landlord replaced it with a “way better product” than was previously there.

The Tenant denied damaging the garage door at move out. He said that the garage door was damaged approximately a month before the tenancy ended but he did not know how it happened. The Tenant also stated that the garage door opener was in his vehicle and he was not able to return it to the Landlord.

The Tenant stated that there was no garden hose when they moved in. He stated that he purchased a hose and took it when they left.

In terms of the condition of the yard, the Tenant confirmed that they were “not up to par” in keeping the grass looked after.

In terms of the paint, the K.K. stated that the Landlord started the move out inspection by saying that the entire rental unit required repainting which likely would cost \$3,600.00. He stated that they are a young family with two small children and having their \$2,600.00 in Deposits tied up was too expensive for them and was very upsetting. He claimed that the situation escalated from there and the Landlord called the police.

The Tenant confirmed that it was his understanding that they were required to patch any holes, sand and paint the walls at the end of the tenancy. He confirmed that he colour matched the walls, but the paint faded over the year such that the paint didn’t match properly when the repairs were done.

Analysis

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

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.

I will first address with the Landlord's claim for the cost to replace items allegedly removed by the Tenants.

The Tenant, K.K., testified that there was no garden hose on the property at the start of the tenancy and he therefore purchased one for their use. The Landlord claims the Tenants removed the garden hose. While it is often the case that the parties' recollection of events differs, when such conflicts in testimony arise, and without corroborating evidence, I am unable to prefer one parties' version over the other. As it is the Landlord who bears the burden of proving their claim, I find the Landlord has failed to meet the burden with respect to the replacement of the garden hose.

The Tenants did not dispute the Landlord's claim that they removed the gas can for the lawnmower. I therefore award the Landlord the replacement cost.

K.K. also confirmed that the dining room area rug was "removed". He did not specify by whom, however I find this to be an acknowledgement that it was not replaced by the Tenants prior to the end of the tenancy. I therefore award the Landlord the replacement cost.

I accept the Tenants' evidence that the shelf in the closet in the master bedroom was raised and not removed. Photos submitted by the Landlord suggest this occurred. I therefore dismiss the Landlord's claim for related compensation.

I will now address the Landlord's claim for cleaning costs. Notably, the majority of the Landlord's photos relate to their claim that the rental unit required repainting. Some of the photos depict garbage left outside the rental unit. There are only a few which depict the condition of the upstairs. As previously indicated, of the three videos provided in evidence only one was viewable; notably, this video showed the rental unit as being cleaned to a reasonable standard. In all the circumstances I find the Landlord has submitted insufficient evidence to support a claim that the rental unit required interior cleaning in the amount of \$280.00 and I dismiss this portion of her claim.

Conversely, I find, based on the evidence before me that the Tenants left numerous items which required disposal. Although the Tenants may have hoped to return to the rental unit to finish removing these items, there was no evidence to show that they attempted to make such arrangements, and in any case, the cost to deal with these

items was ultimately paid for by the Landlord. I therefore award the Landlord the **\$276.15** claimed.

I accept the Landlord's evidence that the garage door and hallway door required replacement. The Tenant K.K. conceded that the garage door was damaged but denied knowledge of how it occurred. He also confirmed he did not replace the garage door opener, which could have easily been sent by regular mail. Further, he did not dispute the Landlord's claim relating to the hallway door. I therefore award the Landlord the **\$150.00** and **\$220.00** claimed for replacement of these doors.

The majority of the Landlord's claim relates to wall repair and painting. I accept the Landlord's evidence that the rental unit was substantially renovated prior to the tenancy such that the paint was essentially new. The evidence confirms that the Tenants repaired most of the nail-holes, sanded and spot painted the walls. Unfortunately, due to the age of the paint, the patching was not successful.

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

...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..."

I find that the Tenants repaired any damage to the walls as required. However, and while it was the Tenants' hope that this would be satisfactory, unfortunately due to the fading of the paint, the Tenants' repairs were not seamless such that the walls required further painting. The photos submitted by the Landlord confirm that painting of the

walls was necessary and as such I find the Landlord is entitled to recovery of the painting costs.

Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements provides that interior paint has a useful life of four years. As the tenancy was for one year, the amount claimed by the Landlord for painting is to be discounted by 25% for a total of **\$1,012.50** for repair and paint supplies and **\$243.59** for the cost of the paint.

I also find the Landlord is entitled to the amounts claimed with respect to cleaning the yard, removing pet waste and power washing the deck and stairs in the amount of **\$462.00**, **\$26.25** and **\$131.25** respectively. Notably, this was not disputed by the Tenants; rather, K.K. confirmed the yard was not left in a reasonable condition. As well, I find that the photos submitted by the Landlord also support these claims.

The Tenants did not dispute the Landlord's claim for the cost to replace the damaged door weather stripping or the damaged cabinet. The photos submitted by the Landlord confirm this damage. I therefore award the Landlord the **\$22.37** and **\$4.69** claimed for these items.

The Landlord initially applied for the sum of \$5,770.00. Although this amount was later reduced by amendment filed October 15, 2018, the initial claim was substantially more and likely a barrier to any productive settlement discussions. I therefore exercise my discretion pursuant to section 72 of the *Act* and award the Landlord one half of the filing fee in the amount of **\$50.00**.

Registered mail costs are not recoverable under the *Act* and I therefore dismiss this portion of the Landlord's claim.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,653.34** for the following:

| ITEM | COST |
|-----------------------------------|----------|
| Replace gas can | \$10.97 |
| Replace dining room area rug | \$43.57 |
| Removal of yard waste and battery | \$276.15 |
| Replace garage door | \$150.00 |
| Replace hallway door | \$220.00 |

| | |
|---|-------------------|
| Repair and paint damaged walls and paint supplies (discounted by 25%) | \$1,012.50 |
| Paint (discounted by 25%) | \$243.59 |
| Yard clean up and damage | \$462.00 |
| Pet waste removal | \$26.25 |
| Power wash areas (deck and stairs) covered in pet hair | \$131.25 |
| Replace damaged door weatherproofing | \$22.37 |
| Repair pet damaged kitchen cabinet | \$4.69 |
| Filing fee | \$50.00 |
| TOTAL | \$2,653.34 |

The Landlord may retain the Tenants' \$2,600.00 security and pet damage deposit towards the amounts claimed and is granted a Monetary Order for the balance of **\$53.34**. The 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: January 4, 2019

Residential Tenancy Branch