



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, MNDL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed on August 22, 2018 wherein the Landlord requested monetary compensation from the Tenant for loss of rent, damage to the rental unit and recovery of the filing fee.

The hearing was scheduled for teleconference hearing on 1:30 p.m. on December 18, 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.

When the hearing first commenced, I could not hear the Landlord; although it was clear he had called into the teleconference. For a brief time, from 1:33 p.m. until 1:35 p.m. the Landlord was absent from the call as he addressed his connectivity issues. I did not hear any evidence from the Tenant during that time as we simply waited for the Landlord to reconnect.

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 Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the tenancy agreement providing that this tenancy began January 1, 2018. Monthly rent was payable in the amount of \$600.00. The Tenant paid a \$300.00 security deposit which was retained by the Landlord for half of the August 2018 rent by agreement.

The Landlord confirmed that he purchased the rental property in February of 2015. He was informed that the rental unit was vacant for 8 years prior to that date. He stated that the building was built in the 1950's and had a couple of additions added over the years, perhaps 10-15 years prior.

The Landlord filed a Monetary Orders Worksheet wherein the following was claimed:

Estimated cost to replace carpet	\$2,840.25
Replacement cost of flooring in storage area	
material	\$336.00
Labour	\$850.00
Finish coating	\$75.00
Repair and repaint damaged walls	
Materials	\$75.00
Labour	\$85.00
Remove outdoor trash and clean grounds	
Labour (3 hrs at \$17/hour)	\$51.00
Transportation to landfill	\$40.00
Clean interior bathroom & kitchen	
Labour (12 hrs at \$17/hour)	\$204.00
Materials	\$25.00
Loss of rent	
Three months at \$700.00 per month	\$2,100.0
TOTAL CLAIM	\$6,681.25

The Landlord also sought compensation for \$700.00 per month for three months for a total of \$2,100.00 claiming that they were not able to re-rent the unit due to the condition it was left in by the Tenant.

The Landlord stated that, as of the date of the hearing, the rental unit is still not ready to go because of the tremendous work required to make the unit re-rentable. He also stated that they have improved the property including putting on a new roof, redoing the living room ceiling; replacing the flooring with laminate flooring; and rebuilding the bathroom.

The Landlord stated that they did a move in condition inspection which was signed by the Tenants. He stated that they did not know when the Tenant was going to move out and therefore did the move out inspection after the Tenant had already left.

The Landlord stated that there is an unheated portion for storage which was used as a "mud room". The Landlord stated that the Tenant's dog pulled away at the wall (as depicted in the photos).

The Landlord also claimed that the Tenant did not remove the nails and patch the holes and further claimed that there were an unreasonable number of holes.

The Landlord also stated that the Tenant left a lot of trash and garbage.

Photos submitted in evidence by the Landlord depicted the following:

- stains on the carpets and wood floor, including red and blue paint, as well as areas which the Landlord claimed were the result of dog urine.
- nails and screws in the walls;
- paint hand prints on the wall;
- garbage outside of the rental unit; and
- damage to wood panelling where insulation appears to be pulled out.

The Tenant responded to the Landlord's claims as follows. The Tenant confirmed that as she moved out of the rental unit in the middle of August 2018 she informed the Landlord that he could retain the security deposit towards the half a month's rent.

The Tenant disputed any further loss of rent claimed by the Landlord noting that the Landlord sought \$700.00 for three months, when they were only paying \$600.00 during the tenancy

The Tenant also stated that there isn't a lot to rent in the community in which the rental unit is located such that she did not understand why the Landlord had difficulty re-renting the unit.

The Tenant conceded that they did not do their best to clean. She also stated that she was agreeable to the amounts claimed by the Landlord to replace the carpets and repair the walls, although she noted that the carpets were "not up to par" when they moved in.

The Tenant also claimed that there were plenty holes in the walls when they moved in and stated that they did not add a lot of holes to the walls and used the nails and screws that were already there.

In terms of the mud room, the Tenant stated that the floor "wasn't up to par" when they moved in. She claimed that the walls were already damaged with insulation coming out, although her dog did have fun pulling out the insulation.

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 before me and on a balance of probabilities I find as follows.

The Tenant confirmed during the hearing she did not dispute the Landlord's claims for cleaning of the rental unit, nor did she dispute the cost to replace the carpet or repair the walls. I am also persuaded by the photos submitted by the Landlord that the carpet was significantly damaged and stained and required replacement due to the pet urine. The photos of the wall in the "mud room" also show that it was damaged at the end of the tenancy such that it required repairs. I therefore find the Landlord is entitled to the

amounts claimed for replacement of the carpeting and the amounts claimed for repair and repainting of the walls.

The Tenant also conceded that she did not clean as required. Again, photos submitted by the Landlord show garbage left both inside and outside of the rental unit. I therefore find the Landlord is entitled to the amounts claimed for cleaning and garbage removal.

The Tenant's main dispute was with Landlord's claim for loss of rent. She conceded that he was entitled to half a month due to the date the tenancy ended and the parties agreed the Landlord would retain the security deposit for this purpose. She did not, however, agree to his claim for an additional three months' rent at \$700.00 per month.

As noted, the Landlord bears the burden of proving their claim on a balance of probabilities. I find the Landlord has failed to meet this burden with respect to the loss of rent claim.

The Landlord testified that he was not able to re-rent the rental unit for three months due to the condition in which it was left by the Tenant. While the photos submitted support a finding that some cleaning was required and a finding that the carpets required replacement and the walls required repair, I find insufficient evidence to support a finding that this would require more than a few days to correct.

The Landlord testified that the rental unit was not re-rented as of December 18, 2018, as they continued to improve and renovate the property. I find it more likely the inability to re-rent was due to the Landlord's choice to improve the property, not as a result of the condition in which it was left by the Tenant.

Further, I am unable to find that the Landlord fulfilled their obligation to mitigate their losses as required by section 7 of the *Act*. Notably, the Landlord failed to submit any evidence of his attempts to re-rent the rental unit, such as advertisements. In British Columbia there currently exists a housing crisis. I accept the Tenant's testimony that there are few rentals in the community in which the rental unit is located and I am unable to find that the condition in which the rental unit was left prohibited the Landlord from re-renting the unit in a timely manner. I therefore dismiss the Landlord's claim for monetary compensation for loss of rent for three months.

As the Landlord has only enjoyed partial success, I decline his request to recover the filing fee.

Conclusion

The Landlord is granted monetary compensation in the amount of **\$4,581.25** for the following:

Estimated cost to replace carpet	\$2,840.25
Replacement cost of flooring in storage area	
material	\$336.00
Labour	\$850.00
Finish coating	\$75.00
Repair and repaint damaged walls	
Materials	\$75.00
Labour	\$85.00
Remove outdoor trash and clean grounds	
Labour (3 hrs at \$17/hour)	\$51.00
Transportation to landfill	\$40.00
Clean interior bathroom & kitchen	
Labour (12 hrs at \$17/hour)	\$204.00
Materials	\$25.00
TOTAL AWARDED	\$4,581.25

In furtherance of the above, the Landlord is granted a Monetary Order in the amount of \$4,581.25. This Order must be served on the Tenant and may be filed and enforced 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 16, 2019

Residential Tenancy Branch