



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 15, 2018, in which the Landlord requested monetary compensation from the Tenant for damage and cleaning of the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on February 11, 2019.

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 deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began January 15, 2016. At the time the tenancy began rent was payable in the amount of \$1,750.00; rent was increased during the tenancy and at the time the tenancy ended was payable in the amount of \$1,814.00 per month. The Tenant also paid a security deposit of \$875.00.

The Landlord's Representative R.S. also testified. He confirmed that the tenancy ended on September 30, 2018.

The Landlord claimed the sum of \$1,276.38 on their application. R.S. confirmed that the original amount was an estimate as the actual amount sought in terms of compensation is \$1,104.50. This was also provided for in the Monetary Orders Worksheet as follows:

Laminate flooring repairs	\$500.00
Carpet stain removal	\$210.00
Carpet cleaning	\$94.50
Suite cleaning	\$300.00
TOTAL	\$1,104.50

Introduced in evidence was a copy of the move in and move out Condition Inspection Report. The reports indicated that the Tenant agreed that the reports accurately recorded the condition of the rental unit at the time the reports were completed. R.S. stated that it was his understanding that the Tenant did not dispute the claims, only the *amounts* claimed for each item.

In support of the amounts claimed, the Landlord provided copies of all the receipts for the above claimed expenses.

In terms of the amounts claimed for the carpet, R.S. confirmed that the carpet cleaning was a standard charge. R.S. also stated that they tried to minimize costs by repairing, not replacing. For instance the Landlord confirmed that the carpet stains were not actually removed, and despite this the Landlord did not replace the carpet.

R.S. testified that the suite cleaning was in fact requested by the Tenants at the time they moved out. The Landlord also submitted photos of the rental unit in support of their claim for cleaning.

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

The Tenant stated that they did not receive a copy of the move out condition inspection report as required.

The Tenant stated they believe that only one of the marks in the laminate flooring was "damage" as opposed to normal wear and tear, but that in any case, the Landlord should only receive \$100.00 for this claim. The Tenant stated that the day that they did the move out inspection, the Landlord's representative said he could fix the flooring for \$100.00, which is why the Tenant noted his agreement on the move out inspection report.

In terms of the carpet stain removal, the Tenant submitted that only \$105.00 should be awarded to the Landlord for removal of one stain. The Tenant stated that they did not see the other stain, nor was it brought to their attention; the Tenant also noted that the Landlord only provided a photo of one stain in evidence.

In terms of the \$300.00 claimed by the Landlord for suite cleaning, the Tenant stated that during the move out, the Landlord's representative told the Tenant that they would charge \$25.00 per hour, and that it would only take 4 hours. He stated that the total amount claimed was for 12 hours which the Tenant stated was "ridiculous". The Tenant stated that it was not believable to have the cleaners clean for 12 hours.

The Tenant confirmed that they agreed to the \$94.50 claimed by the Landlord for carpet cleaning.

In reply to the Tenant's submissions, R.S. stated that they sent a copy of the move out condition inspection report when they filed their evidence package in January of 2019. When I put it to him that it was 15 days after the tenancy ended, he then stated that the report was attached to an email sent to the Tenant during their negotiations.

The Tenant submitted that the move out condition inspection report was not provided to them by email as claimed by the Landlord and claimed that this was confirmed in the email communication which had been provided in evidence. The Tenant stated that the first time they received the move out condition inspection report was when they received the Landlord's evidence package.

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

The Tenant confirmed on the move out condition inspection report that the report accurately recorded the condition of the rental at the time the tenancy ended. The Tenant further confirmed during the hearing that he did not take issue with the items claimed for repair to the laminate flooring, cleaning of the carpet, including removal of a stain and suite cleaning; rather, the Tenant took issue with the *amounts* claimed for each of these items, alleging the Landlord did not mitigate their losses, or claimed excessive amounts.

The Tenant testified before me that he and the Landlord agreed to certain amounts when the move out condition inspection occurred, and that this was further confirmed in the email communication between the parties. Based on my review of the emails provided in evidence I did not see any such agreement. That said, the email communication is clear that the Tenant repeatedly asked the Landlord for a detailed breakdown of the amounts claimed, as well as suggesting the Landlord did not mitigate their losses by obtaining comparative quotes with respect to the laminate flooring.

The Tenant disputed the Landlord's claim for \$500.00 for repairing the laminate flooring and suggested a figure of \$100.00 was more reasonable. Photos submitted by the Landlord show gouges in what appears to be four pieces of the laminate flooring.

The email exchange between the parties indicates that the Tenant asked if the Landlord obtained quotes from other repair persons to ensure they were getting the lowest price. The evidence further shows that the Landlord did not respond to this request, nor did the Landlord submit any evidence to support a finding that the Landlord made their best efforts to minimize their losses as required by section 7 of the *Act*.

Section 7(2) of the *Act* mandates that a party making a claim must mitigate their losses and reads as follows:

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the evidence before me I am unable to find the Landlord did whatever as reasonable to minimize their loss as required by section 7(2). I therefore award the Landlord the nominal sum of **\$250.00** representing one half of the amounts claimed for repair of the laminate flooring.

The Tenant disputed the amounts claimed for cleaning the rental unit alleging that 12 hours of cleaning was not required. The Tenant testified that during the move out inspection they discussed the need for minimal cleaning which was agreeable to the Tenant. The photos submitted by the Landlord indicate that some cleaning was required; however, I am unable to conclude, based on these photos, that the rental unit required the efforts of two cleaners for six hours. Again, the email evidence confirms that the Tenant raised their concerns as early as October 2018, such that the Landlord was aware the Tenant took issue with the amounts claimed for cleaning. This should have alerted the Landlord to the increased need to provide supporting evidence for their claim in this regard.

I therefore award the Landlord the nominal sum of **\$150.00** for general cleaning.

The photos submitted by the Landlord confirm that the carpet was stained at the end of the tenancy. I accept the Landlord's evidence that despite their efforts these stains could not be removed. I find the **\$210.00** claimed by the Landlord to be reasonable based on the photos submitted in evidence and I therefore award the Landlord the full amount claimed.

The Tenant agreed to the Landlord's request for **\$94.50** for carpet cleaning.

As the Landlord has been only partially successful, I dismiss their claim for recovery of the filing fee.

In summary, I award the Landlord monetary compensation in the amount of **\$704.50** as follows:

Laminate flooring repairs	\$250.00
Suite cleaning	\$150.00
Carpet stain removal	\$210.00
Carpet cleaning	\$94.50
TOTAL AWARDED	\$704.50

I will now turn to the issues related to the Tenant's security deposit and the condition inspection report.

I accept the Tennant's evidence that the Landlord did not provide them with a copy of the move out inspection report until the Landlord served their evidence in January of 2019. While the Landlord testified that they sent the report by email to the Tenant, a careful review of the email communication, which was provided in evidence and which was between the parties at the material time, confirms no such report was sent.

I therefore find the Landlord provided the Tenant with a copy of the report in January of 2019.

Section 36 of the *Residential Tenancy Act* provides in part as follows:

Consequences for tenant and landlord if report requirements not met

36...(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36(2)(c) references the “regulations” which in term refers to the *Residential Tenancy Branch Regulations*. The applicable provision with respect to providing copies of the report to the Tenant is section 18 of the *Regulations* and which reads as follows:

Condition inspection report

18 (1) The landlord must give the tenant a copy of the signed condition inspection report

(a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

(2) The landlord must use a service method described in section 88 of the Act [*service of documents*].

By failing to provide the Tenant with a copy of the move out condition inspection report as required, the Landlord has extinguished their right to claim against the deposit in accordance with section 36 of the *Act*.

As such, when the tenancy ended the Landlord's only option under section 38(1) of the *Act* was to return the funds to the Tenant. The Landlord failed to return the security deposit to the Tenant and therefore breached section 38(1) of the *Act*.

Section 38(6) provides that:

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, I find the Tenant is entitled to return of double the security deposit paid (2 x \$875.00), namely: **\$1,750.00.**

Conclusion

The Landlord is entitled to the sum of **\$704.50** for cleaning of the rental unit, laminate flooring repair as well as carpet cleaning and stain removal. The Landlord's claim for recovery of the filing fee is dismissed.

The Landlord failed to provide the Tenant a copy of the move out condition inspection report as required by the *Act*. In doing so the Landlord extinguished their right to claim against the security deposit and was required to return the Tenant's funds. In failing to do so, the Tenant is entitled to return of double the deposit paid pursuant to section 38 of the *Residential Tenancy Act* for a total of **\$1,750.00**.

The amounts awarded to each party are to be offset against the other such that the Tenant is entitled to a Monetary Order in the amount of **\$1,045.50**. This Order must be served on the Landlord 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: February 27, 2019

Residential Tenancy Branch