



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S

Introduction

This hearing dealt with the landlords' application pursuant to the Residential Tenancy Act (the "Act") for:

- a monetary order for damage to the unit pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified that they served the tenants each a copy of the notice of dispute resolution package and their evidence by registered mail on November 30, 2018. The landlords provided the registered mail tracking numbers evidencing the service. However, the landlords did not serve the tenants with a cleaning invoice which the landlords filed with the Residential Tenancy Branch on January 14, 2019.

I find that the landlords have served notice of dispute resolution package in accordance with section 89 of the *Act*.

The tenants personally served their evidence on one of the landlords on January 31, 2019. The tenants did not serve their evidence on the other landlord.

Preliminary Issue:

Correction of Tenants Names

The tenants testified that their names were incorrectly stated on the application for dispute resolution. Pursuant to section 64(3) of the *Act*, I amended the application to correct the tenants' names.

Cleaning Invoice Not Served

During the hearing the landlords presented a cleaning invoice which had not been served on the tenants before the hearing.

Residential Tenancy Branch Rules of Procedure, sections 3.1 states that an applicant must serve the respondent with all evidence submitted to the Residential Tenancy Branch within three days of the notice of dispute resolution package becoming available. Furthermore, *Residential Tenancy Branch Rules of Procedure*, sections 3.14 states that evidence which was not submitted at the time of Application for Dispute Resolution must be received by the respondent not less than 14 days before the hearing.

In this matter, the landlords submitted the cleaning invoice to the Residential Tenancy Branch on January 14, 2019 but the landlords did not serve the cleaning invoice on the tenants. I find that the landlords' failure to serve the cleaning invoice violates the *Residential Tenancy Branch Rules of Procedure*.

The landlords testified that the cleaning invoice was not served with the original document package because the invoice was not available at the time. However, the cleaning invoice was available by January 14, 2019 when the landlords filed the cleaning invoice with the Residential Tenancy Branch. The landlords did not provide any explanation for their failure to serve the invoice after that date other than an explanation that the landlords did not know that service was required.

I find that the admission of this nondisclosed evidence would prejudice the tenants and result in a breach of the principles of natural justice. Accordingly, I exclude the landlords' cleaning invoice as evidence and I will not consider that document in my decision.

Landlords Served the Tenants with Black and White Evidence

The landlords submitted numerous colour photographs to the Residential Tenancy Branch. However, the landlords served the tenants with black and white copies of these photographs.

Tenancy Branch Rules of Procedure, section 3.10.4 states that:

Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the **same documents and photographs [emphasis added]**

I find that black and white photographs are not the same documents as colour photographs. The tenants testified that they could not see details in the black and white copies served by the landlord. I find that the admission of these color photographs would prejudice the tenants. Accordingly, I exclude the landlords' photographs as evidence and I will not consider those documents in my decision.

Tenants' Evidence Not Served on One Landlord

The tenants testified that they only served their evidence package on one of the landlords. The tenants testified that they did not have an address for the other landlord. The landlords objected to the nonservice of one of the landlords.

Residential Tenancy Branch Rules of Procedure, sections 3.15 states that:

...The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

Furthermore, the respondent is required to serve each of the applicants with their evidence. *Residential Tenancy Branch Rules of Procedure*, sections 3.16 states that:

At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that **each applicant** was served with all their evidence as required by the Act and these Rules of Procedure. [emphasis added]

I find that the tenants' failure to serve their evidence upon both of the landlords violates the *Residential Tenancy Branch Rules of Procedure*. However, I do not find that the failure to serve one of the landlords prejudices the landlords or violates the principles of natural justice.

The tenants served their evidence to the address provided by the landlords on the condition inspection report and there is no evidence submitted that the landlords provided a different address for service. In addition, the landlords did not provide any reason why they could not share the tenants' evidence package. Furthermore, I do not find that the landlords are prejudiced since the non-served landlord did not attend the hearing anyway. I will allow the admission of the tenants' evidence and consider these documents in my decision.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage to the unit pursuant to section 67?

Are the landlords authorized to recover their filing fee for this application from the tenants pursuant to section 72?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The parties testified that the tenancy started November 2014 with a monthly rent of \$1,100.00. The parties agreed that the tenants provided a security deposit of \$500.00 and no pet damage deposit.

The parties completed a condition inspection report on move in. The tenants submitted a copy of the condition inspection report.

The parties agreed that the tenants moved out of the property on November 15, 2018. However, the parties agreed that they conducted the move out condition inspection report on November 14, 2018.

Page three of the condition inspection report stated “scratched flooring, drawing on walls” on page three, as damage which the tenant is responsible for. However, the itemized portion of the condition inspection report which provides a place for comments on the condition of each of the rooms in the rental unit, did not identify any damage to rental unit.

The landlords testified that the property was very dirty and it needed to be extensively cleaned. However, there were no indications that the rental unit was dirty on the condition inspection report. The landlord testified that it cost \$385.20 to have the property professionally cleaned.

The landlords also testified that the hard wood floor in the living room was damaged by the tenants. The landlords testified that there was a scratch in one of the flooring panels which needed to be replaced and that multiple flooring panels needed to be replaced in order to repair the flooring.

The landlords testified that they needed to use four boxes of flooring to repair the flooring. The landlords testified that they had a supply of spare boxes of flooring for repair and that each of the boxes costs \$39.00; for a total of \$156.00 for four boxes of flooring panels. The landlords did not provide receipts for flooring panel boxes. The landlords did not claim any labour costs for the flooring repair.

The landlords also testified that the tenants caused other damage to the property. However, the landlords only claimed compensation for cleaning costs and the floor repair for this hearing.

The tenants testified that they left the rental unit in good condition. They denied that the rental unit was dirty. The tenants were not aware of damage to the floor. The tenants testified that the living room floor was covered with a rug the entire duration of their tenancy.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that the party who caused the damage pays compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant

bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The landlord has claimed compensation for cleaning costs and damage to the flooring. I will consider each claim separately.

Cleaning

I am not satisfied that the rental unit needed cleaning services at the end of the tenancy. The landlord testified that cleaning was required but the tenants denied this. The landlord did not provide any evidence corroborating the need for cleaning services.

In addition, there was no mention of the rental unit being dirty in the condition inspection report. *Residential Tenancy Regulation* section 21 provides that "...a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection." I find that the lack of any reference to the rental unit being dirty in the condition inspection report is evidence that the rental unit was not left in a dirty state. For the forgoing reasons, I find that the landlord has not proven on the balance of probabilities that cleaning services were necessary and I deny the landlords' request for compensation for cleaning costs.

Floor Damage

The landlords also claimed that the flooring in the living room was scratched. Although the tenants testified that they were not aware that the flooring was scratched, I am satisfied that the damage occurred based upon the notation in the condition inspection

report. I find that the landlord's stated repair costs of \$156.00 for replacement flooring panels is reasonable. I grant the landlord's request for \$156.00 compensation for the floor repair.

Accordingly, I find that the landlord is entitled to an award of \$156.00 from the tenant for damages to the property.

Security Deposit

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$500.00. I find that the repair costs of \$156.00 may be deducted from the deposit pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been partly successful this matter, I award the landlord \$50.00 for a partial recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

The landlords shall return the balance of the security deposit of \$294.00 to the tenants pursuant to section 38 of the *Act*.

Item	Amount
Security deposit held landlord	\$500.00
Less: Damages payable to landlord	(\$156.00)
Less: Filing recovered by landlord	(\$50.00)
Net refund of deposit to the tenant	\$294.00

I find that the landlord is entitled to a monetary award of \$156.00 for damage to the property.

I find that the landlord is entitled to recover \$50.00 as reimbursement of their filing fee.

The landlord may deduct the monetary award of \$156.00 and the reimbursement of the filing fee of \$50.00 from the tenant's security deposit.

I find that the tenant is entitled to a partial refund of his deposit in the amount \$294.00 pursuant to section 38 of the *Act*.

Accordingly, I order the landlords to return \$294.00 of the security deposit to the tenants.

Conclusion

The tenant is granted a monetary order in the amount of **\$294.00**. This order must be served on the landlord. If the landlord does not comply with this order, the tenant may enforce this order in the Small Claims Division of the British Columbia 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: February 20, 2019

Residential Tenancy Branch