



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought monetary compensation from the Tenant, authority to retain her security deposit and recovery of the filing fee.

The hearing was scheduled for February 15, 2019 at 1:30 p.m. Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:07 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that he served the Tenant with the Notice of Hearing and the Application on October 29, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

The Landlord testified that he was informed by the post office that the Tenant signed for the package on November 2, 2018. I accept his testimony in this regard and find the Tenant was duly served as of November 2, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant's 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for damage to the rental unit?
2. Is the Landlord entitled to retain 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 which confirmed that the tenancy began on July 1, 2016 and rent was payable in the amount \$850.00 per month. The Landlord stated that the Tenant paid a \$425.00 security deposit which was used, by agreement of the Tenant, for the Tenant's rent in February 2018.

The tenancy ended April 20, 2018. The Landlord stated that although the Tenant was supposed to move out on April 11, 2018, they agreed the Tenant could stay provided that she paid the outstanding rent and paid towards some of the repairs. The Landlord further stated that despite this agreement the Tenant vacated the rental unit on or about April 20, 2018 without paying the outstanding amounts.

The parties attended a prior Arbitration at which time the Landlord was granted an Order of Possession as well as a monetary order for \$950.00 which included unpaid rent for March 2018 as well as recovery of the filing fee. The Landlord confirmed that on the application before me that same sum of \$950.00 was also erroneously claimed.

In the within action, the Landlord confirmed he sought the sum of \$8,100.00 for the following:

Replacement of kitchen cabinets	\$3,000.00
Replacement of kitchen stove	\$799.00
Labour for drywall repair, paint and painting of the rental unit	\$2,000.00

Dump fees	\$1,800.00
Electrical repairs for replacement of baseboard heaters	\$1,750.00
Filing fee	\$100.00
TOTAL CLAIMED	\$9,449.00

The Landlord also confirmed that he took off \$1,300.00 from the total for the paint and the painting as the Tenant had been in the rental unit for some time

Photos submitted by the Landlord confirmed the condition of the rental unit as follows:

- walls covered in crayon marks;
- significant damage to walls including scratches and holes and grease splatter;
- broken baseboard electrical heaters;
- missing baseboards;
- missing electrical outlet covers;
- a broken door;
- the oven and microwave which had not been cleaned;
- piles of garbage bags and discarded toys and clothing and numerous other items left in the rental unit; and,
- a broken oven.

The Landlord stated that the Tenant broke the locking mechanism on the oven; although they attempted to repair the oven they were advised by the repairperson that the repair cost exceeded the cost to replace the oven.

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.

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 the following.

I accept the Landlord's undisputed evidence that the rental unit required significant repairs and cleaning at the end of the tenancy. The photos submitted by the Landlord further confirm his testimony.

I find the Tenant failed to clean and repair the rental unit as required by section 37 of the *Act*. I further find the Landlord incurred the expenses associated with cleaning and

repair. I am satisfied the Landlord mitigated their losses by only replacing items when the cost of repair was excessive.

I therefore find the Landlord is entitled to the amounts claimed (less the reduction for some of the painting costs) as well as recovery of the filing fee for a total award of **\$8,200.00.**

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$8,200.00** for the amounts claimed for cleaning and repair of the rental unit and recovery of the filing fee. To this end the Landlord is granted a monetary order in the amount of \$8,200.00. 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: February 20, 2019

Residential Tenancy Branch