



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FFT MNDL-S FFL

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord sought:

- a monetary order for loss, damage and money owed under the tenancy agreement pursuant to section 67 of the *Act*;
- an order to retain the tenants’ security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants sought:

- a return of the security deposit pursuant to section 38 of the *Act*; and
- a return of their filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing, with the tenants being represented by tenant R.N. (the “tenant”). Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the one another, and to make submissions. Each party acknowledged receipt of the other’s Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service of the other’s Notice of Hearing documents. I find the parties were served with these documents in accordance with the *Act*.

Preliminary Matter: Non-Service of Evidence

The tenant testified that the landlord did not serve the tenants with the evidence he sought to rely on at the hearing. A review of the documents submitted into the online evidence portal reveal, the landlord uploaded three receipts from hardware stores and twelve photographs of the rental unit purporting to show damage to the property. The tenant testified that he received the Notice of Hearing for landlord's cross-application but the landlord did not serve the tenants with any evidence. The tenant uploaded a complete copy of the package received from the landlord which included only the landlord's Notice of Hearing and RTB instruction pages. Based upon the testimony of the tenant, and the corroborating copy of the package received from the landlord, I find that the landlord did not serve his evidence on the tenants.

Residential Tenancy Branch Rules of Procedure, section 3.3 states that:

3.3 Evidence for cross-Application for Dispute Resolution

Evidence supporting a cross-application must:

- be submitted at the same time as the application is submitted, or within three days of submitting an Online Application for Dispute Resolution;
- be served on the other party at the same time as the Notice of Dispute Resolution Proceeding Package for the cross-application is served; and
- be received by the other party and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.

As stated above, I find that the landlord did not serve his evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. 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, the landlord's undisclosed evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

Issue(s) to be Decided

Are the tenants entitled to an order for return of their security deposit pursuant to section 38? If so, are the tenants entitled to an amount equal to double the security deposit pursuant to section 38?

Is the landlord entitled to a monetary order for compensation for damage to the rental unit pursuant to section 67?

Can either party recover their filing fee?

Background and Evidence

The parties agreed that the tenancy was a fixed term tenancy which initially ran from October 1, 2016 to October 31, 2017. The tenancy was later extended to October 31, 2018. The monthly rent was \$2,300.00 payable on the first day of each month. The tenants paid a \$1,150.00 security deposit which the landlord continues to retain.

The parties further agreed that they both prepared a condition inspection report on move-in but not on move-out. The condition inspection report stated that there were holes in the carpet in the master bedroom and stains on the basement floor.

The tenant testified that they moved out on October 31, 2018. The parties met at the property on November 1, 2018 to return the keys. The parties agreed that the tenants provided the landlord with their forwarding address by text that day. The tenants provided a copy of the text message corroborating of their testimony. The tenant testified that he asked the landlord to complete the condition inspection report on move-out but the landlord refused.

The tenant testified that the landlord never returned any part of the security deposit and the tenants have therefore filed an application for dispute resolution on November 27, 2018 seeking a monetary award of double the security deposit.

The landlord filed a cross-application for compensation for damage to the rental unit on February 15, 2019. The landlord sought compensation in the amount of \$1,650.00.

The landlord testified that the tenants damaged the flooring by tearing and staining the carpet, scratching and gouging the hardwood floor, and staining the garage floor. The landlord testified that the tenants also left holes in the walls. Furthermore, the landlord testified that the tenants left the rental unit in a dirty condition.

The landlord testified that he needed to spend approximately \$1,000.00 on supplies to repair and repaint the holes in the wall and replace the carpet and hardwood floors. The landlord claimed compensation \$650.00 for his labor to make the repairs and clean the rental unit. The landlord did not obtain any repair estimates.

The tenant admitted that they did allow holes to develop in the walls. The tenants explained that this happened accidentally because the doors did not have doorstoppers.

The tenant stated that the carpet in the bedroom was already in very poor condition when they moved in. The tenant argued that the damaged condition of the carpet was noted on the condition inspection report on move in. The tenant also stated that the stains in the basement were also pre-existing and referenced in the condition inspection report on move in.

The tenant denied any damage to the hardwood floors. The tenant testified that the hardwood floors did not have any damage on move out which would have been indicated on the condition inspection on move out if the landlord had participated as the tenant had requested.

Analysis - Tenants' Claim for Security Deposit

Section 24(b) of the *Act* states that, "The right of a landlord to claim against a security deposit ... for damage to residential property is extinguished if the landlord does not complete the condition inspection report..." Based on the agreed testimony of both parties, I find that the landlord did not complete a condition inspection report on the tenants' move-out. Accordingly, the landlord's right to claim against the security deposit for damage to the rental unit has been extinguished pursuant to section 24(2) of the *Act*.

Furthermore, section 38 of the *Act* states that:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing,

...the landlord must do one of the following:

repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the agreed testimony of both parties, I find that the tenancy ended on October 31, 2018. Further, the parties agreed that the tenants provided their forwarding address in writing on November 1, 2018. While not a recognized form of service under the *Act*, I find that pursuant to section 71(2)(c) of the *Act* that delivery of the forwarding address by text message sufficiently meets the requirements that the address be "in writing" Accordingly, I find that the tenants delivered their forwarding address in writing for the purposes of section 38(1) on November 1, 2018.

Pursuant to section 71(2)(c) of the *Act* the landlord had 15 days after the end of the tenancy and the delivery the tenants' forwarding address to repay the full deposit or file

an application for dispute resolution. Since the forwarding address was provided on November 1, 2018, the landlord's deadline to repay the deposit in its entirety or file an application for dispute resolution was November 16, 2018.

I find that the landlord did not fulfil either of these requirements by the November 16, 2018 deadline. Accordingly, I find that the landlord is in violation of section 38(1) of the *Act*. According to section 38(6) of the *Act*, if a landlord does not comply with section 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit. Since I have found that the landlord has violated section 38(1) of the *Act*, I find that the landlord must pay the tenants double the amount of the security deposit, in this case \$2,300.00 (2 x \$1,150.00).

Analysis - Landlord's Claim for Damages to the Rental Unit

The landlord has applied for a monetary award of \$1,650.00 representing damage purportedly done to the rental unit by the tenants.

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 party to pay 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. Residential Tenancy Branch Rule of Procedure 6.6 notes, 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.

Holes in the Walls

The tenant admitted causing the holes in the walls so the landlord is entitled to compensation for this loss. However, I am not satisfied that the landlord has provided

sufficient evidence to prove the actual monetary loss he has sustained. The landlord did not provide estimates for this repair or testimony detailing the cost of the repairs. In the absence of satisfactory evidence of the repair costs, I will consider an award of nominal damages. *Residential Tenancy Policy Guideline* No. 16 defines nominal damages as:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

In this matter, an award of nominal damages is appropriate because the landlord has established that the holes in the walls has caused damages but the landlord has failed to provide sufficient evidence of the amount of his monetary loss. In these circumstances, I award the landlord nominal damages of \$300.00 to repair the holes in the walls.

Carpet Damage

I am not satisfied that the landlord has provided sufficient evidence to prove that the tenants damaged the carpet. *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.” In this matter, the condition inspection report on move-in stated that the carpet was already damaged. Based on the condition inspection report, I find that the tenants’ testimony that the carpet damage was pre-existing to be more credible than the landlord’s testimony. Accordingly, I dismiss the landlord’s request for compensation for the damage to the carpet.

Hardwood Floor Damage

The landlord testified that the tenants damaged the hardwood floors whereas the tenant testified that the hardwood floors were not damaged when the tenants moved-out. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this matter, the landlord has the burden to prove that the tenants damaged the hardwood floor. However, with both parties presenting equally plausible testimony regarding the condition of the hardwood floor and no corroborating evidence, I am unable to determine whether the tenants damaged the hardwood floors. Since the

evidence is inconclusive, I find that the landlord has not satisfied his onus of proof. Accordingly, I dismiss the landlord's request for compensation for the damage to the hardwood floors.

Basement Stains

The stains on the basement floor were noted on the condition inspection report on move-in, I am not satisfied that the landlord has presented sufficient evidence to prove that the tenants caused this damage. I dismiss the landlord's request for compensation for the basement stains.

Cleaning

The parties provided conflicting testimony on the need for cleaning after move-out. While the landlord testified that rental unit required cleaning, the landlord did not detail the specific cleaning that was allegedly needed. The landlord simply stated that cleaning was needed. I find this testimony to be without sufficient detail and I find the landlord has failed to provide evidence other than vague testimony that cleaning was needed. Accordingly, I dismiss the landlord's request for compensation for cleaning.

As the tenants have been successful this matter, I award the tenants \$100.00 for recovery of the filing fee. Further, since the landlord was unsuccessful in his application, I dismiss the landlord's request for recovery of the filing fee.

I award the tenants a monetary order of \$2,100.00 as follows:

Item	Amount
Recovery of double the security deposit (\$1,150.00 x 2)	\$2,300.00
Less compensation to landlord for wall damage	(-\$300.00)
Filing recovered by tenants	\$100.00

Total award to tenants	\$2,100.00
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Conclusion

The landlord's right to retain the security deposit is extinguished.

I grant the tenants reimbursement of the filing fee.

I grant the tenants a monetary order in the amount of **\$2,100.00**. If the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be enforced 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: March 20, 2019

Residential Tenancy Branch