



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 16, 2018 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted to the Residential Tenancy Branch were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents. As these documents were served in accordance with section 89 of the *Residential Tenancy Act (Act)*, they were accepted as evidence for these proceedings.

On March 04, 2019 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via email, on March 04, 2019. The Landlord acknowledged receiving this evidence. As the Landlord acknowledged receiving these documents I find they have been sufficiently served, pursuant to section 72(2)(c) of the *Act*, and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on November 01, 2016;
- the tenancy ended on October 31, 2018;
- the Tenant paid a security deposit of \$850.00;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy; and
- the Tenant provided a forwarding address, in writing, on October 31, 2018.

The Landlord is seeking compensation, in the amount of \$150.00, for replacing a dining room light. The Landlord and the Tenant agree that the Tenant removed the dining room light during the tenancy and replaced it with a different light. The Agent for the Landlord stated that the Landlord did not like the Tenant's choice of light so the Landlord replaced the light after the tenancy ended.

The Landlord submitted photographs of the light that was provided at the start of the tenancy and the light which the Landlord purchased to replace the light at the end of the tenancy. The Landlord submitted a receipt for purchasing the light, which was more than \$150.00.

The Tenant submitted a photograph of the light he installed during the tenancy. He argued that the Landlord did not discuss the cost of the light with him prior to installing it and he believes the light was too expensive.

The Landlord is seeking compensation, in the amount of \$150.00, for repainting a closet door. The Landlord and the Tenant agree that the door was scratched during the tenancy. The Tenant stated that he believes the door was damaged by a nail protruding from the wall. The Agent for the Landlord stated that his contractor told him that there was nothing on the wall that would have scratched the door.

The Landlord submitted a photograph of the damaged closet door.

The Landlord is seeking compensation, in the amount of \$350.00, for repairing a chip in the tile surrounding the bathtub. The Landlord and the Tenant agree that the damage occurred during the tenancy. The Tenant stated that the contractor told him it is possible the chip occurred due to the house settling and the tile coming into contact with the bathtub. The Agent for the Landlord told him that the contractor told him he had never seen similar damage to a tile and he thinks the contractor may have been speculating when he told the Tenant the tile may have been damaged by settling.

The Landlord submitted a photograph of the chip that fell from the tile but a photograph of the actual damaged tile was not submitted.

The Landlord is seeking compensation for a move out fee of \$100.00. The Landlord and the Tenant agree that the Tenant was required to pay a move out fee of \$100.00, which has not been paid.

The Landlord is seeking compensation for a fine of \$200.00, which the Agent for the Landlord stated was charged by the Strata because the Tenant did not pay a move out fee of \$100.00. The Landlord submitted documentation from the Strata that declares a fine of up to \$200.00 could be imposed. The Agent for the Landlord submitted no documentary evidence to establish that a fine was imposed.

The Landlord is seeking compensation for a \$20.00 fee for cleaning an interior dryer vent. Neither the Landlord nor the Tenant could explain this fee.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 32(3) of the *Act* stipulates that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to replace the light that was provided with the tenancy, which the Tenant removed during the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of purchasing a replacement light. As the Landlord has submitted evidence to show that the Landlord paid more than \$150.00 to purchase the light, I find that the Landlord is entitled to the full claim of \$150.00.

In adjudicating this matter I have viewed the photographs of the light that was in place at the start and the light that the Landlord installed after the end of the tenancy. As these lights appear to be of similar quality I have placed no weight on the Tenant's submission that the replacement light purchased by the Landlord was too expensive.

I find that the Landlord has submitted insufficient evidence to establish that the closet door was scratched due to the negligence of the Tenant. On the basis of the photograph submitted in evidence I find it entirely possible that the door was damaged due to something protruding from the wall, as the Tenant contends. As it is possible the door was damaged due to a deficiency with the rental unit, I cannot conclude that the Tenant is obligated to repair the door. I therefore dismiss the claim for repairing the door.

I find that the Landlord has submitted insufficient evidence to establish that the tile was damaged due to the negligence of the Tenant. In reaching this conclusion I was heavily influenced by the absence of any evidence that refutes the Tenant's testimony that the Landlord's contractor told him the damage could have been the result of the building settling. As the damage could have been the result of settling, I cannot conclude that the Tenant is obligated to repair the tile. I therefore dismiss the claim for repairing the tile.

On the basis of the undisputed evidence I find that the Tenant was required to pay a move out fee of \$100.00, which has not been paid. I therefore find that the Tenant owes the Landlord a move out fee of \$100.00.

I find that the Landlord submitted insufficient evidence to establish that a \$200.00 strata fine was levied. In reaching this conclusion I was heavily influenced by the absence of documentary evidence to establish that a fine in any amount was levied. I therefore dismiss the claim for a \$200.00 strata fine.

As the Landlord was unable to explain why the Tenant was obligated to pay a \$20.00 fee for cleaning an interior dryer vent, I dismiss this claim.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$450.00, which includes \$150.00 for replacing a light; a move out fee of \$100.00; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$450.00 from the Tenant's security deposit in full satisfaction of this monetary claim.

As the Landlord has not established the right to retain the entire \$850.00 security deposit, I find that the Landlord must return the remaining \$400.00 to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for \$400.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: March 14, 2019

Residential Tenancy Branch