Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD
FFL, MNDCL-S, MNDL-S

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed on October 19, 2018 she sought return of her security deposit and recovery of the filing fee. In the Landlords' Application for Dispute Resolution filed on January 3, 2019, the Landlords sought monetary compensation from the Tenant, authority to retain her security deposit and recovery of the filing fee.

The hearing was originally scheduled for 1:30 p.m. on February 14, 2019. Due to the Landlord's health issues the original hearing was adjourned to April 2, 2019 at 11:00 a.m.

When the hearing reconvened on April 2, 2019, initially only the Tenant called into the teleconference; after approximately 16 minutes into the hearing the Landlord and her mother called in. At that time I summarized the Tenant's testimony to the Landlord.

During the hearing both parties 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 Tenant entitled to return of double her security and pet damage deposit?

2. Is the Landlord entitled to monetary compensation from the Tenant?

3. Should either party recover the filing fee?

Background and Evidence

The Tenant testified that her tenancy began June 1, 2016. Monthly rent was $750.00 and the Tenant paid a further $750.00 representing a security deposit and pet damage deposit.

The Tenant stated that the Landlord did not do a move in condition inspection report in accordance with the *Residential Tenancy Act* or the *Regulations.*

The tenancy ended on September 30, 2018. The Tenant testified that she provided the Landlord with her forwarding address on a note left in the mailbox with the key to the rental unit on September 30, 2018.

The Tenant stated that following the end of the tenancy the Landlord sent her a text message and told her that she wanted to meet with her on the weekend of October 10, 2018 to do the walk through. The Landlord did not follow up with any arrangements and texted the Tenant on October 14, 2018 advising the Tenant that she had already done the walk through.

The Tenant applied for Dispute Resolution on October 19, 2019. The Tenant stated that she only claimed $1,200.00 on her Application as “[she] expected the Landlord would seek some amount from [her]”.

The Landlord, R.A., testified as follows. She confirmed that the tenancy began June 1, 2016. The Landlord claimed that the Tenant only paid $700.00 security deposit and pet

damage deposit. This was confirmed on page three of the residential tenancy agreement provided in evidence.

The Landlord confirmed that the tenancy ended pursuant to a 2 Month Notice to End Tenancy. The Tenant moved out on October 1, 2018.

The Landlord testified that as she did not live in the community in which the rental unit was located, she relied on her mother to deal with tenancy issues. The Landlord also stated that she has health issues which have impacted her ability to deal with this matter.

The Landlord confirmed that she did not perform a move in condition inspection report when the tenancy began. The Landlord provided a copy of a move out condition inspection report which was conducted when the previous renters moved out and argued that this report should be used as evidence of the condition of the rental when the subject tenancy began as she noted that the prior tenant received her full security deposit.

The Landlord stated that she was not in the community in which the rental unit was located at the time the tenancy ended as she was having surgery at the time. She stated that she returned to the community on October 9, 2018.

The Landlord stated that a week later (approximately October 15, 2018) the Tenant came to the rental unit and the Tenant provided her with her forwarding address again. The Landlord stated that she had just gotten out of the hospital and didn't know what to do in terms of applying for dispute resolution.

In support of her claim the Landlords filed a Monetary Orders worksheet in which they claimed the following:

Cleaning supplies	$114.21
Cleaning and paint supplies	$160.36
Toilet	$95.87
Painting supplies	$327.46
Paint	$275.78
Cleaning	$500.00
Painting	$600.00
Yard repair	$850.00
Replacement screens	$200.00

Closet bi-fold door	$100.00
TOTAL CLAIMED	**$3,623.00**

The Landlord testified that she painted the rental unit three years prior to the tenancy began such that the unit was painted in approximately 2013.

The Landlord stated that she replaced the toilet at the end of the tenancy because when it was being cleaned it broke as the bolts were rusted with urine.

The Landlords sought monetary compensation for repairs to the yard. She stated that the side yard is essentially "gone" now as the Tenant used the side yard to store a shed and a boat.

In terms of the claim for the screens the Landlord stated that all the screens were ripped at the end of the tenancy.

The Landlord also testified that the closet bi-fold was "busted right through the middle".

In response to the Landlords' claims the Tenant denied that she left the rental unit in the condition as depicted by the photos.

In terms of cleaning, the Tenant stated that she wiped out the drawers and cupboards. She also stated that she cleaned the oven as best as she could. She claimed that she used oven cleaner and baking soda and vinegar when the oven cleaner was not successful in cleaning the oven.

The Tenant submitted photos of the rental unit which she claimed to have taken on September 29, 2018. Those photos were not visible to me as they were in black and white and appeared to be copies of the original colour photos. During the hearing on April 2, 2019, I gave the Tenant authorization to resubmit these photos. I confirm that on April 2, 2019 I received the Tenant's colour photos and reviewed them in making this my Decision. These photos are generally taken from a distance; notably, two photos depict the following:

- the stove top not cleaned; and,
- significant rust beside the toilet on the baseboard as well as the base of the toilet.

The Tenant stated that she believed that the rental unit was cleaned to a reasonable standard when she moved out. That said, she also conceded that she did not pull the

refrigerator or the stove out to clean. She also stated that she did not clean the ceiling fan. The Tenant claimed that she cleaned the toilet when she moved out. She also stated that she tried to get all the rust off with bleach but it would not come off.

In terms of missing items, the Tenant claimed that there was only one screen in the living room and it was bent when she first moved in there.

In terms of damage to the rental unit, the Tenant responded as follows. She stated that the bi-fold door and the bathtub faucet handle were already broken when she moved in. She also stated that when she moved in the paint had nicks on it from the prior tenant such that she did not believe it had been recently painted.

In terms of the Landlord's claim for compensation for repairs to the yard, the Tenant stated that she dug four holes in the back yard because of ants. She also claimed to have repaired the holes with topsoil. The Tenant also testified that the feces on the yard are not from her dogs as they are too small for her dog; she noted that there are two other dogs that live in that complex.

In reply the Landlord stated that she took the photos of the rental unit when the tenancy ended. She also noted that the photos provided by the Tenant were taken from a distance such that they did not show the dirt.

The Landlord further stated that she did not claim compensation for fixing the bathtub tap or the kitchen drawer but provided photos of them to confirm the condition the rental unit was left in.

The Landlord also conceded that the condition of the yard could have been caused by the other renters' dogs.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *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.

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.

I will first deal with the Tenant's claim for return of her security deposit. The Tenant applies for return of their security deposit pursuant to section 38 of the *Residential Tenancy Act* which reads as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
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> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
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> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
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> (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(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.

The Tenant testified that she left the keys to the rental unit and a note with her forwarding address on the date she vacated the rental unit: September 30, 2018. Notably, the Landlord did not dispute this during the hearing. I therefore find that the Landlord received the Tenants forwarding address in writing on September 30, 2018.

The Landlord applied for dispute resolution on January 3, 2019. As such, I find that the Landlord failed to return the deposit or apply for arbitration, within 15 days of the end of the tenancy or receipt of the forwarding address of the Tenant, as required under section 38(1) of the *Act*.

By failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlords also extinguished their right to claim against the security deposit for damages, pursuant to sections 24(2) of the *Act*.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the Tenant an Order from an Arbitrator. If the Landlord believes they are entitled to monetary compensation from the Tenant, they must either obtain the Tenant’s consent to such deductions, or obtain an Order from an Arbitrator

authorizing them to retain a portion of the Tenants' security deposit. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

The Tenant claimed she paid a $750.00 security deposit. The Landlord testified that it was $700.00. The tenancy agreement filed in evidence indicates the security deposit was $700.00. I therefore find, on a balance of probabilities, that the deposit was $700.00.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the Landlord pay the Tenants the sum of **$1,400.00**, comprised of double the security deposit (2 x $700.00).

I will now address the Landlords claims. The Landlords claimed the Tenant failed to clean and repair the rental unit as required by the *Act,* and that they incurred costs to clean and repair the unit.

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.
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> (2) When a tenant vacates a rental unit, the tenant must
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> (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 Tenant failed to clean and repair the rental unit as required by section 37. I accept the Landlords' evidence that she took photos of the rental unit at the time the tenancy ended. Those photos confirm the Landlord's testimony and support their claim for cleaning and repairs. While the Tenant also took photos, they were taken at such a distance as to be of little probative value. As well, the Tenant conceded that she did not perform some necessary cleaning.

I therefore award the Landlord the $114.21 claimed for cleaning supplies and $500.00 claimed for cleaning.

I also accept the Landlord's evidence that the toilet broke as a result of the build up of rust. The photos submitted by both parties show significant water/urine damage on the wall and toilet and indicate a lack of regular cleaning or maintenance. I therefore award the Landlords the $95.00 claimed for replacing the toilet.

I dismiss the Landlords claim for the cost to paint the rental unit.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item.

In order to estimate depreciation of the replaced item guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
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> If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. According to the table, interior paint has a useful life of four years. The Landlord testified that she painted the rental unit in 2013, such that I find the paint had reached its useful life by the time the tenancy ended in 2018. I therefore dismiss her claim for painting expenses.

As one line item on the Landlords' Monetary Orders Worksheet was described as "cleaning and paint supplies" I discount that item by 50% for any amounts associated with painting.

The Landlord conceded that the yard may have been damaged by the other renters' pets. I therefore dismiss their claim for costs associated with yard repair.

The Landlord claimed expenses for replacing window screens; the Tenant stated that they was only one screen and it was already bent when she moved in. As the Landlords failed to conduct a move in condition inspection report, at the time the tenancy began, I am unable to prefer the Landlords' evidence in this regard. I therefore find they have failed to prove their claim for the cost to replace the screens.

The photos submitted by the Landlords confirm that one of the bi-fold doors was broken at the end of the tenancy. The Tenant stated that the door was broken when she moved in. I do not accept the Tenant's evidence as I find the Tenant would have brought this to the Landlords' attention during the tenancy and requested that it be repaired. I find it more likely the Tenant damaged the door. I therefore award the Landlord sthe $100.00 claimed.

In total I award the Landlords $890.39 in compensation for the following:

Cleaning supplies	$114.21
Cleaning	$500.00
Toilet	$95.87
Cleaning and paint supplies (less 50% for paint)	$80.31
Closet bi-fold door	$100.00
TOTAL AWARDED	**$890.39**

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fee.

Conclusion

The Tenant's award of $1,400.00 is offset against the Landlord's award of $890.39 such that the Tenant is entitled to a Monetary Order in the amount of **$509.61.** This Order must be served on the Landlords 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: May 1, 2019

Residential Tenancy Branch