



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing convened as a Review Hearing. The original application was filed on March 4, 2019 in which the Landlord sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee.

The original hearing convened on January 23, 2019. At that time only the Landlord attended. The Landlord was successful in their application and by Decision dated February 1, 2019 obtained a Monetary Order in the amount of \$693.50.

The Tenants applied for Review Consideration of the Decision on February 15, 2019. The Tenants' request was granted on the basis that the Landlord did not inform the Arbitrator at the original hearing that the Tenant had paid a pet damage deposit in the amount of \$500.00 in addition to the security deposit.

The Review Hearing was scheduled for teleconference before me at 11:00 a.m. on April 12, 2019 the hearing did not complete and was adjourned to 9:30 a.m. on June 10, 2019 Both parties called into the hearings and 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 Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' deposits towards the amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord appeared and testified at the original hearing on January 23, 2019. The Landlord's testimony was summarized by the Arbitrator as follows:

The landlord gave the following undisputed testimony. The tenancy started on May 1, 2016 and ended on October 31, 2018. The rental unit is a newly built house, less than five years old, located in a new subdivision. At the beginning of the tenancy, the parties completed a condition inspection report and the landlord accepted a security deposit of \$800.00 which she still holds. A copy of the tenancy agreement was not entered into evidence to show the amount of rent at the commencement of the tenancy, however at the conclusion of the tenancy, rent was \$1,612.00 per month.

When the tenancy ended on October 31, 2018 at 9:00 p.m., the tenants were still in the process of moving out. At that time, the house was in general disarray with friends of the tenants assisting the tenants in moving their belongings out. At the agreed time, the landlord commenced the move-out condition inspection report without the tenants participating. As the tenants were still in the unit packing and moving during the inspection, the landlord gave the report to the tenant VL to review and sign. The landlord was made aware of the tenants' forwarding address on October 31, 2018 when the tenant VL signed the condition inspection report. The landlord filed their application for dispute resolution on November 15, 2018.

A copy of the move-out inspection report was submitted. The move-out date is not indicated on the report, however the landlord testified that it was completed the night of

October 31, 2018. The report notes “damage to the rental unit for which the tenant is responsible: cleaning, clean carpets, drywall damage-BR, dents etc. acknowledge about 70%, and bulbs out.” Damage to the exhaust fan in the kitchen and a broken fridge handle were not noted on the report as these deficiencies were discovered after the landlord and tenant, VL had signed it.

The landlord submitted invoices to substantiate their claim.

- 1. The first invoice is from a carpet cleaning in the amount of \$160.00 plus GST.*
- 2. The second invoice, in the amount of \$330.00 from the professional cleaning company, indicates a total of nine hours to clean walls, floors, light fixtures, baseboards, bathrooms, deep kitchen, etc.*
- 3. The third invoice consisted of an email from JP. This invoice quotes fridge handle and seal plus (one) hour labour to repair, two hours labour to power wash the deck and back wall of the house, and an additional two hours labour to do yard and flower bed clean up. JP quotes \$452.89 plus 22.59 GST to do this work.*
- 4. The last invoice, from the property maintenance company quotes six hours at \$35.00 per hour to repair minor drywall damage and touch up paint, replace weather stripping on back door and install new exhaust fan in the kitchen. It also quotes \$208.35 for materials, including colour match paint, weather stripping and a new fan.*

The landlord testified that since the tenants were still moving out throughout the night of October 31, 2018, when the subsequent tenants tried to move in the following morning, the rental unit was in such a poor state of cleanliness and repair that they were unable to take possession of the unit. The landlords reimbursed the new tenants \$110.00 which represents two days rent at \$1,650.00 per month.

At the hearing before me, the Landlord confirmed the above information was true save and except for the following. She clarified that the Tenants paid \$762.50 for the security deposit and \$500.00 for the pet damage deposit. She also noted that the Tenants participated in the condition inspection report and signed off when the keys were turned over.

In response to the Landlord’s submissions and testimony the Tenant, V.L., testified as follows.

V.L. stated that she did not have the carpets professionally cleaned as she believed that she had to clean the carpet after two years.

In terms of the \$330.00 claimed by the Landlord for cleaning, V.L. stated that she believed this was inflated. She noted that they hired a professional cleaner for \$175.00.

V.L. conceded that the kitchen was not finished such that she believed that 5 hours of cleaning at \$25 per hour, for a total of \$125.00 was more reasonable.

V.L. stated that the Tenants disputed the Landlords claim for repairs as follows:

V.L. stated that the fridge handle was loose, but it was not broken, it was merely a stripped screw. V.L. submitted that the \$346.23 claimed was also inflated. Additionally, she claimed that the current tenant provided a message on April 10, 2019 informing them that the stripped screw is still there and the repair wasn't in fact done.

V.L. confirmed that she was disputing the \$439.27 claimed for the drywall. She further noted that there was damage on the drywall above the windows when they moved in (as noted on the move in condition inspection report: holes in the drywall above every window). The Landlord told the Tenants to repair the damage and hang their own curtains and leave it as it was.

The Tenant further stated that the other tenant (who is a painter) purchased the colour matched paint and now the Landlord is trying to charge them for it.

The Tenant also testified that the hood fan was running at 9:00 p.m. as they were using the self-cleaning feature of the oven (which the Tenant claims requires the hood fan to be on). The Tenant stated that the hood fan was very loud at the time they did the move out inspection, and she and the agent were having trouble talking over the fan.

The Tenant also disputed the Landlord's claim for loss of rent, as she said she believes they were illegally evicted. She stated that initially the Landlord told the Tenants that they were responsible for the rent for November and the Tenant felt this was reasonable and accepted that they would stay at least until November 15, 2019. She was okay with this as it was Halloween and she wanted to be there for her children. She also hired movers for November 15, 2019. The Landlord then told the Tenants they had to be out by October 31, 2019 which is why they rushed to move out, as the Landlord was threatening them with a possession order.

The Tenants also disputed the filing fee.

In reply, the Landlord noted they are relying on the *Residential Tenancy Policy Guideline 1* which provides that Tenants are responsible for cleaning the carpets after a yearlong tenancy

The Landlord also noted that the Tenant agreed that the rental unit required cleaning as set out on the move out condition inspection.

In terms of the Tenant's submissions regarding the fridge handle, the Landlord stated that the handle was changed. She stated that she did agree with the Tenant that it was not noted on the move out inspection, as it was not discovered until the cleaning was done. The Landlord claimed that the handle was replaced, although it may be loose again, but that does not mean it wasn't replaced.

In terms of the Tenants' testimony regarding the drywall holes, etc. the Landlord conceded that they were not there for the move in and as such they cannot dispute what she said. The Landlord's Agent conceded that if that was what she was told they would not dispute it.

In terms of the range hood fan the Landlord's Agent stated that the range hood fan was not noted as broken until the cleaners attended.

The Landlord's Agent L.F. also testified. She stated that the fan was on when the move out condition inspection occurred. She noted that when the cleaners went to clean the entire range hood fell off the wall. L.F. stated that the range hood was replaced. When I asked her why it was not just cleaned and reinstalled, she stated that it was the recommendation of the contractor to replace it.

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. 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.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

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 and on a balance of probabilities I find as follows.

As aptly noted by the Landlord, a Tenant is responsible for cleaning carpets after a tenancy of more than a year. I therefore award the Landlord the **\$168.00** claimed.

The Tenant conceded that the kitchen was not cleaned as required. Although she submitted that the amount claimed by the Landlord for general cleaning was unreasonable, I disagree.

The Tenant confirmed on the move out condition inspection that the rental unit was left dirty. Section 21 of the *Residential Tenancy Regulation* provides that condition inspection reports are to be accepted as evidence of the condition of the rental unit at the time the report is completed unless there is a preponderance of evidence to the contrary. In this case I find the Tenant has failed to rebut the evidentiary value of the report and I therefore find the Landlord is entitled to the **\$330.00** claimed.

I accept the Landlord's evidence that the fridge handle was replaced. Although the new tenant may have reported that the handle was loose again, this does not mean it was not replaced. I also accept the Landlord's evidence that the deck and back wall of the house were power washed and that they hired J.P. to clean up the yard and flower beds; notably, this was not disputed by the Tenant. I therefore award the Landlord the **\$439.27 claimed.**

I dismiss the Landlord's claim for \$475.33 to repair drywall damage, touch up paint, and install a new exhaust fan in the kitchen. The Landlord conceded they were not present during the move in when the Landlord's agent told the Tenant not to worry about the drywall damage and that they were prepared to accept the Tenant's testimony in this regard. I am also unable to find that the range hood required replacement. L.F. testified that it was working when the move out condition inspection occurred, but later fell off when it was being cleaned. Although their contractor may have believed replacement was preferable, I am unable to find that this was required, and as such find the Landlord did not mitigate their losses in this regard. I therefore dismiss this portion of the Landlord's claim.

I award the Landlord the nominal sum of **\$30.00** to replace the weather stripping. Again, this was not disputed by the Tenant.

I also award the Landlord the **\$110.00** claimed for loss of rent. I accept their testimony and evidence that the rental unit required cleaning such that the new tenants could not move in for two days.

Having been substantially successful I award the Landlord recovery of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$1,177.27** for the following:

Carpet cleaning	\$168.00
General cleaning	\$330.00
Repairs to fridge handle, pressure washing and yard clean up	\$439.27
Replace weather stripping	\$30.00
Loss of rent for 2 days	\$110.00
Filing fee	\$100.00
TOTAL AWARDED	\$1,177.27

The Landlord is authorized pursuant to sections 38 and 72 of the *Act* to retain the sum of \$1,067.27 from the Tenant's \$762.50 security deposit and \$500.00 for the pet damage deposit and the Tenant is entitled to return of the balance of \$85.23. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$85.23**. This Order must be served on the Landlord 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: June 26, 2019

Residential Tenancy Branch