



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDLS, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit, a monetary order for alleged damage by the tenant to the rental unit, and for recovery of the filing fee paid for this application.

The landlord, the landlord's agent, and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and neither party raised concerns or issues with the other's evidence, with the exception of the matter addressed hereafter in this Decision.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord's documentary evidence shows that this tenancy originally began on October 1, 2015, for a fixed term through September 30, 2017. The original security deposit paid by the tenants was \$975.00, paid on or about August 30, 2015. Additionally the tenants paid \$150.00 for two key fobs.

The landlord submitted an additional written tenancy agreement showing another fixed term from October 1, 2018, through September 30, 2020, for a monthly rent of \$2,102.88.

The tenants vacated the rental unit on April 15, 2019, and they provided their written forwarding address on that date. The landlord has not returned the tenants' security deposit, having made this application claiming against it, on April 25, 2019. The undisputed evidence was that the landlord has retained the key fob deposit.

During the hearing, the testimony of the parties showed that while the tenancy ended earlier than the end of the fixed term, the tenants had secured new tenants, who moved in the same day they vacated.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Painting	\$1,050.00
2. Crack in the window	\$1,000.00 (est.)
3. Cleaning fee	\$150.00
4. Administrative penalty fee	\$300.00
5. Filing fee	\$100.00
TOTAL	\$2,600.00

The landlord's additional relevant evidence included, but was not limited to, the condition inspection report, a condition inspection report for the new tenants, invoices and estimated costs for repairs and photographs of the rental unit.

The tenants' relevant evidence included, but was not limited to, a letter from the next tenants, which stated that there were white marks inside the oven and cleaned the

following week by the landlord's representative, but that the rest of the rental unit was cleaned to a reasonable standard, and copies of communication with the landlord.

The participants provided the following oral evidence in support of and in response to the landlord's application.

Painting-

The landlord submitted that there was touch-up paint left in the rental unit, and that the tenants used the wrong paint when attempting to paint over the nail holes at the end of the tenancy. The landlord submitted further that the tenants did not pay attention to the labels, as they used semi-gloss paint on the drywall, which is the type of paint used on baseboards.

The landlord pointed to their photographs to further support their claim.

In response to my inquiry, the landlord said that the rental unit was painted in August 2015, prior to the start of the original tenancy.

In response, the tenants submitted that they used the paint that was left and were not provided instructions on different uses. The tenants submitted that they were trying to help the landlord with the nail holes, but disputed that they were responsible under the Act for nail holes.

The tenants submitted that they did not receive the landlord's painting invoice in their evidence. The landlord confirmed they did not send the painting receipt.

Window repair-

The landlord submitted that the tenants damaged the window, by leaving a crack, which will require a replacement in the future. The landlord submitted photos showing the cracked window.

The claim of \$1,000.00 is an estimate.

Cleaning fee-

The landlord submitted that the rental unit required cleaning after the tenancy ended, as it was not left in a reasonable state.

In response, the tenant said she spent a lot of time cleaning, and when she cleaned the oven, a white film was left inside.

Administrative penalty fee-

The landlord submitted that the tenants signed the written tenancy agreement, which included a clause stating the tenants would be liable to pay, in addition to liquidated damages equal to two months' rent, a cash \$300.00 administration penalty fee.

The tenant submitted that they felt pressured into signing this agreement.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

As to the costs claimed by the landlord associated with cleaning and damage, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged except for reasonable wear and tear.

Painting-

The evidence shows this tenancy began on October 1, 2015, and lasted nearly 3 ½ years. I find it reasonable that during this time of living in the rental unit, the tenants would hang pictures and other wall hangings.

I reviewed the photographic evidence of the landlord and did not find the number of nail holes to be excessive. I also find it reasonable that in a tenancy of this length, the landlord would be responsible for filling the holes at the end of the tenancy.

There was no evidence before me that the landlord had set out rules for wall hangings and as I have found the number of nail holes to not be excessive, I do not find the tenants damaged the rental unit.

I therefore dismiss the landlord's claim for painting.

Window repair-

The landlord's evidence shows that the cracked window has not been replaced. As they have not shown they have incurred a loss for a window replacement, I find they have not met their burden of proof for loss as outlined above

I therefore dismiss their claim for window repair.

Cleaning fee-

I have reviewed the landlord's photographic evidence and find that the state of the oven looked reasonably clean. I was not provided the age of the oven, but it appears to be a number of years old. I find the oven looks well used, but not unclean.

I also relied on the new tenants' written statement which confirmed that the oven had been cleaned, but still had the white cleaning marks.

I also note that I could not rely on the move-out condition inspection report provided by the landlord, as the landlord had not signed it nor provided a date of the final inspection.

I therefore dismiss the landlord's claim for cleaning.

Administrative penalty fee-

Residential Tenancy Branch Policy Guideline 4 states a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a **penalty** and as a result will be **unenforceable**. (emphasis added)

While the landlord has attempted to separate the administrative penalty fee clause from their liquidated damages clause, I find that the effects of the two clauses are the same.

The Act and Regulations clearly intend that a landlord not be allowed to penalize a tenant. I find this clause charged by the landlord is plainly a penalty and I dismiss their claim for \$300.00.

As I have dismissed all of the landlord's monetary claim, I also dismiss their request for recovery of the filing fee.

As I have dismissed the landlord's claim against the tenants' security deposit, I order the landlord to return the tenants' security deposit, immediately.

In addition, under section 6 of the Residential Tenancy Branch ("RTB") Regulations, "Refundable fees charged by the landlord", a landlord may not charge a fee if the key or access device is the tenant's sole means of access to the residential property. Nonetheless, it appears the tenants were charged for two building access fobs and the landlord has not returned this fee.

Pursuant to section 62 of the Act, I order the landlord to immediately return the \$150.00 charged by the landlord for building fob deposits to the tenants.

To give effect to these orders, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their security deposit of \$975.00 and the building fob deposit of \$150.00, for a total monetary order of \$1,125.00.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenants' security deposit of \$975.00 and building access fob deposit of \$150.00, immediately, and the tenants are granted a monetary order in the amount of \$1,125.00 in the event the landlord does not comply with these orders.

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 20, 2019

Residential Tenancy Branch