



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL –S, MNDL –S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the landlord served her hearing documents, including an Amendment and evidence to the tenant by way of paper copies sent to the tenant at his new address of residence by registered mail. The tenant also served his evidence and response to the landlord via registered mail. It should be noted that the landlord had uploaded digital photographs to the Residential Tenancy Branch at the time of filing her application; however, she did not serve photographs of the same quality to the tenant. Rather, the package served upon the tenant included small black and white photographs. A copy of the same package served upon the tenant was also submitted to the Residential Tenancy Branch by the landlord. I noted that the package served upon the tenant and submitted to the Residential Tenancy Branch included a number of small, grainy black and white as the photographs shared the page with various text messages.

As I informed the parties during the hearing, the Rules of Procedure provide that identical copies of photographs and documents are to be submitted to the Residential Tenancy Branch and served upon the other party. Rule 3.7 provides:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office. For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

[My emphasis underlined]

Rule 3.10.4 recognizes that a party may submit evidence digitally to the Residential Tenancy Branch and paper copies to the other party; however, the evidence must be the same. Rule 3.10.4 provides:

3.10.4 Digital evidence served to other parties

Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43).

Parties who serve digital evidence to the Residential Tenancy Branch and paper evidence to other parties must provide the same documents and photographs, identified in the same manner in accordance with Rule 3.7.

[My emphasis underlined]

Since the tenant was expected to rely upon and respond to the evidence served upon him, including the small black and white photographs, to ensure fairness I have also relied upon a copy of that same package that was submitted to the Residential Tenancy Branch and I have not considered the digital photographs uploaded by the landlord.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant in the amounts claimed for rent, damage, cleaning and removal of abandoned furniture?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one-year fixed term tenancy started on October 1, 2018 and was set to expire on September 30, 2019. The tenant paid a security deposit of \$675.50 and was required to pay rent of \$1,375.00 on the first day of every month.

The landlord prepared a move-in inspection report; however it was filled in by the landlord prior to the tenant inspecting the unit with the landlord. The tenant did sign the move-in inspection report but he did not indicate whether he agreed or disagreed with the landlord's assessment in the space provided for doing so on the report.

The landlord found the rental unit was abandoned on March 3, 2019 and the keys left on the countertop when she entered the unit with a furnace technician.

Below, I have summarized the landlord's claims against the tenant and the tenant's responses.

Rent for March 2019

The landlord submitted that the tenant did not give any advance notice that he was going to end the tenancy when he did and the landlord did not receive any rent for March 2019. The landlord was able to re-rent the unit for April 2019 and the landlord seeks to recover unpaid and/or loss of rent from the tenant for the month of March 2019.

The tenant testified that he abandoned the unit on February 28, 2019 and acknowledged he did so without any advance notice that he was going to end the tenancy when he did.

The tenant explained that he ended the tenancy because he felt it was unsafe for his family because he was using the gas stove to heat the unit. The tenant was of the

position the furnace was not providing sufficient heat and the windows were old and drafty.

On February 18, 2019 the tenant sent a long text message to the landlord concerning the flooring and made one enquiry about updating the windows at the end of the message.

On February 21, 2019 the tenant sent a text message informing the landlord that the heating system was inefficient and the windows were mouldy and proposed ending the tenancy May 1, 2019; otherwise, he would send a formal letter to the landlord.

The landlord's response to the tenant's text message was that she would have the furnace inspected but that she could not afford to replace the windows since she had to repair the roof.

On February 22, 2019 the tenant wrote a formal letter requesting repairs and he mailed it to the landlord.

This letter serves as a written request for the following repair(s):

We ask that the landlord make immediate repairs to the rental unit to ensure a permanent ability of the heating system and window installation to provide a minimum overnight temperature of 18C. and a daytime minimum temperature of 22C. as stated in the page 5 applicants rental unit. We request that this be done by no later than April 30 2019. If this basic living condition cannot be met we request that an alternate route be taken, where our lease be terminated as of May 1st 2019 with an allotted 2 months to find new tenancy, that we reserve to the right to leave the unit in the state of uncleanness and deterioration in which it was in when we moved into the unit and that we receive our damage deposit back in full.

The landlord made an appointment to have a third furnace technician inspect the heating system despite having the system inspected two previous times in the past year. Due to the cold snap at the time there was a high demand for furnace technicians and the landlord was able to have a technician attend the property on March 3, 2019. The landlord offered the tenant a portable heater in an email dated February 27, 2019 but there was no response from the tenant.

The parties provided consistent submissions that the windows have since been replaced but the tenant moved out before that happened.

The tenant stated that he decided to move out so soon after sending the February 22, 2019 letter because the landlord had already said she would not be replacing the windows and a better rental unit became available so he took it.

Wall repairs, painting, and removal of abandoned furniture

The landlord submitted that she paid a contractor \$500.00 for 9 hours of labour to fill, sand and paint the walls in the living room and remove the tenant's abandoned furniture. The landlord purchased the materials to repair and repaint the walls at a cost of \$162.87.

The landlord submitted that there were several holes and large holes in the living room walls that required repair and repainting. The tenant acknowledged that he had hung artwork, a bike holder and coat hanger on the walls but considered the landlord's claims against him for wall damage to be excessive. The tenant was of the position the walls required repainting anyways, what he did to the walls would be wear and tear, and the labour charged by the landlord's contractor is excessive.

Cleaning

The landlord submitted that she spent 11 hours to clean the unit after the tenant vacated. The landlord submitted that it appeared the tenant made no effort to clean the unit and she spent 11 hours to make it "sparkling clean". The landlord stated that most of her effort was spent in the kitchen, including oven cleaning. The landlord seeks compensation of \$330.00 for the 11 hours she spent cleaning, plus cleaning supplies totalling \$67.03.

The tenant acknowledged that additional cleaning was required at the end of the tenancy but was of the position that 11 hours was excessive considering the unit was small at approximately 400 square feet and dirty when he moved in. The tenant was of the position he had already relinquished his security deposit so the landlord could clean the rental unit.

I noted that in a letter the tenant wrote on March 4, 2019 he indicated the landlord may use the security deposit to aid in cleaning the rental unit.

Sale of abandoned furniture

The landlord sold some of the tenant's abandoned furniture. What did not sell was disposed of. The landlord obtained \$145.00 from the sale of the tenant's property but spent four hours doing so which she seeks to deduct \$120.00 for her time. Accordingly, the landlord has given the tenant a net credit of \$25.00 that was applied toward the claims against him.

The tenant said he was glad the landlord was able to sell some of his abandoned furniture. I note that in a letter the tenant wrote to the landlord on March 4, 2019 the tenant authorized the landlord to sell the furniture.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons.

Unpaid rent

Under section 26 of the Act, a tenant is required to pay rent in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a lawful right to withhold rent.

In this case, the tenant was bound to pay rent for the duration of the fixed term, which was set to end on September 30, 2019. If a tenant ends a fixed term tenancy early, the tenant may be held liable to pay the landlord rent until the end of the fixed term or until

such time the unit is re-rented. As a claimant, the landlord must take reasonable steps to mitigate loss of rent.

I accept the evidence before me that the landlord found the rental unit abandoned on March 3, 2019 when she entered with the furnace technician and that the tenant did not give the landlord indication that he was ending the tenancy prior to March 2019. Rather, the tenant's letter of February 22, 2019 indicates the tenant would end the tenancy effective May 1, 2019 if the landlord did not make certain repairs by April 30, 2019.

Abandoning a rental unit brings a tenancy to an end under section 44 of the Act. Accordingly, I find the tenant ended the tenancy earlier than the expiry of the fixed term of the tenancy agreement and I proceed to consider whether the tenant had a right to end the tenancy early without is excused from having to pay rent for the month of March 2019.

Section 45(3) permits a tenant to end a fixed term earlier than the expiry date of the fixed term where:

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant's letter of February 22, 2019 gave the landlord until April 30, 2019 to rectify the heating issue by making changes to the heating system and installing new windows and if she did not the tenant put the landlord on notice that he would end the tenancy effective May 1, 2019. I am of the view the February 22, 2019 letter may comply with section 45(3); however, the tenant did not give the landlord that time to correct the issue before he ended the tenancy. Considering the letter was mailed on February 22, 2019, the landlord proceeded to make an appointment with a furnace technician and offered the tenant a portable heater, I find the landlord's response was reasonable and the tenant decided to end the tenancy pre-maturely and not in accordance with the notice he issued under section 45(3).

Also of consideration is that the tenant did not make complaints about the lack of heating or using the gas stove for heat in any of the previous winter months. The tenancy started October 1, 2018 meaning there were several prior months where heat would be necessary. It is curious as to why the tenant raised this as an issue only in the

days leading up to the abandonment of the unit and suggests that the tenant was motivated to find a way to end the tenancy because he found another rental unit.

In light of all of the above, I find the tenant remained obligated to pay rent for March 2019 and I grant the landlord's request to recover \$1,375.00 from the tenant.

Wall repairs and removal of abandoned furniture

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Residential Tenancy Branch Policy Guideline 1 provides policy statements with respect to repairs and maintenance of a rental property. The policy guideline provides that it is expected that a tenant will hang artwork on the walls and that a reasonable number of holes is considered wear and tear; however, numerous holes or large holes are considered damage.

The landlord's photographs depict several holes in the living room walls and the tenant acknowledged hanging artwork, a bike holder and coat hanger on the walls. While the hanging of artwork is to be expected and a reasonable number of holes is considered wear and tear, I note that there were many holes and I am of the view that installing a bike holder and coat hanger would leave larger than expected holes. Therefore, I accept that the tenant is responsible for some wall repairs.

When I look at the landlord's assessment of the walls at start of the tenancy, I note that she recorded the walls as showing signs of wear and tear on the move-in inspection report. Also, Residential Tenancy Policy Guideline 40 provides that interior paint has an average useful life of four years and the landlord did not provide any submissions to demonstrate the last time the rental unit was painting. Accordingly, I find it unreasonable to hold the tenant entirely responsible for paying to fill, sand and repaint the walls when there was pre-existing wear and tear and it is expected that the tenant would cause further wear and tear to the walls. I find it appropriate to limit the landlord's award for compensation for wall repairs and painting and I estimate a reasonable award

to be 50% in the absence of further evidence. The landlord is awarded 50% of the material costs, or \$81.44. The labour costs are analyzed below since the labour costs included removal of abandoned furniture.

Section 37 of the Act also provides that a tenant is to leave the rental unit vacant at the end of the tenancy. That includes removal of the tenant's garbage and abandoned possessions. It is also undisputed that the tenant left a number of pieces of furniture behind and the landlord had to deal with those possessions. Therefore, I find the tenant responsible for removal of abandoned possessions.

The landlord's contractor charged her \$500.00 for 9 hours of labour; however, the contractor merely described his tasks as "clean up and repair" without a breakdown to would enable me to differentiate between wall repairs and removal of abandoned furniture.

Considering all of the above, I hold the tenant responsible to pay \$350.00 of the \$500.00 the landlord paid to her contractor for wall repairs, painting and removal of abandoned furniture.

In keeping with the above findings, I authorize the landlord to deduct \$350.00 + \$81.44 from the tenant's security deposit for wall repairs and removal of the tenant's abandoned furniture.

Cleaning and removal of abandoned furniture by landlord

As stated above, the tenant is liable to pay for removal of abandoned furniture. The landlord sold some of the tenant's furniture, which she was not obligated to do, but her efforts resulted in a net benefit to the tenant of \$25.00 after taking into account her time. Therefore, I have accepted and given the tenant the same credit.

Section 37 of the Act provides that a tenant is required to leave a rental unit "reasonably clean" at the end of the tenancy. There is no question that additional cleaning was required in the rental unit and the tenant was agreeable to using his security deposit to do so; however, the tenant was of the position the landlord's cleaning claim was excessive.

There is no exception to this requirement, meaning the cleanliness at the start of the tenancy is not relevant and if the rental unit was not reasonably clean at the start of the tenancy the issue should have been addressed at the start of the tenancy. That being

said, a tenant is not required to bring the rental unit to a higher level of cleanliness, such as “sparkling clean” as described by the landlord, at the end of the tenancy. Therefore, the landlord’s claim for cleaning appears to be somewhat over-stated.

I find a reasonable award to bring the rental unit to a “reasonably clean” condition to be approximately \$200.00 for labour which allows for 8 hours at \$25.00 per hour, plus supplies of \$67.03, or \$267.03. I note that this sum is nearly the amount of the security deposit that remains after deducting the award for wall repairs and dealing with the tenant’s abandoned furniture. Therefore, I award the landlord the balance of the tenant’s security deposit for cleaning and disposal of the tenant’s abandoned property.

Filing fee

The landlord’s claim had merit and I award the landlord recovery of the \$100.00 filing fee.

Security deposit

I have authorized the landlord to retain the tenant’s security deposit for damage, cleaning and disposal of abandoned furniture as provided above.

Monetary Order

In keeping with my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant as calculated below:

Unpaid rent – March 2019	\$1,375.00
Damage, cleaning and disposal of furniture	675.50
Less: security deposit	(675.50)
Filing fee	<u>100.00</u>
Monetary Order	\$1,475.00

Conclusion

The landlord has been authorized to retain the tenant’s security deposit and has been provided a Monetary Order for the balance owing of \$1,475.00 to serve and enforce upon the tenant.

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: July 03, 2019

Residential Tenancy Branch