



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSD
 FFL, MNDL-S

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application filed on July 10, 2019, the Tenants sought return of their security deposit and recovery of the filing fee. In the Landlord's Application filed on July 25, 2019 the Landlord sought monetary compensation from the Tenants in the amount of \$2,000.00 for damage to the rental unit and recovery of the filing fee.

The hearing was scheduled for teleconference before me at 1:30 p.m. on August 15, 2019. Both parties called into the hearing 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 as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants'; security deposit?
3. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. The tenancy began on October 15, 2018. Monthly rent was \$3,000.00 and the Tenants paid a \$3,000.00 security deposit.

In their application the Tenants confirm that the Landlord returned \$1,500.00 of her \$3,000.00 security deposit. The Landlord continues to hold \$1,500.00. In the within action the Tenants seek return of the \$1,500.00 in addition to the \$100.00 filing fee.

The Tenant, M.L., stated that she provided her forwarding address to the Landlord when she sent the hearing package by registered mail. She further confirmed that she did not provide her address to the Landlord at any other time.

The tenancy ended June 2, 2019. The Tenant stated that the Landlord was in another country at the time and as such they did not do a move out condition inspection. The tenant further stated that three weeks later the Landlord asked to do a Move-out Condition Inspection Report. The Tenant called the Residential Tenancy Branch and was informed that the inspection should have occurred when she moved out, not weeks later. The Tenant further stated that she disputed the Landlord's claims that they damaged the rental unit as she believes someone else could have caused the damage after the tenancy ended.

The Tenant denied damaging the walls, baseboards and toilet as alleged by the Landlord. The Tenant stated that they also did not damage the cabinet with water and that the rental unit was as it was when they moved out.

In response to the Tenants' claim and in support of their own, the Landlord testified as follows.

The Landlord stated that the rental unit is a house which was built in 2013. She confirmed that she purchased the rental unit in 2017. She stated that as the rental unit was only three years old at the time she did not paint. A copy of the Move-in Condition Inspection Report was provided in evidence confirming the condition of the rental unit as "good" at that time.

The Landlord confirmed that on June 2, 2019 (when the Tenants moved out) she was living out of the country and did not return to Canada until June 13, 2019. The Landlord further stated that she does not have a property manager or agent caring for the property when she is away. The Landlord testified that she tried to schedule the move out inspection when she returned but did not have a forwarding address for the Tenants. Once she received the Tenants' forwarding address (with their hearing package) she served a Notice of Final Opportunity to Schedule a Condition Inspection. A copy of this Notice, as well as a photo showing the Notice posted to the door was provided in evidence confirming this occurred on July 22, 2019 with a proposed inspection date of July 26, 2019. The Landlord confirmed that the Tenants did not attend on July 26, 2019.

The Landlord testified that she took photos of the rental unit on the first day that she returned on June 13, 2019. Those photos depict minor scratches and dents to the walls, baseboards and doors; one of the photos also shows water damage to the cabinet and to the toilet seat.

The Landlord claimed the sum of \$2,000.00 for cleaning and repairs to the rental unit as well as replacement of her vacuum which she claims the Tenants removed from the rental unit. In support she filed an invoice from W.D.L. (dated July 26, 2019) in which the following was noted:

1	Fix drywall, door, baseboard where needed, match paint color, painting	\$600.00
2	Match and purchase cabinet, remove previous countertop and plumbing fixture, replace the old cabinet, reinstall plumbing and countertop	\$800.00
3	Purchase and replace toilet set	\$120.00
4	Fix stairs	\$100.00
	Sub total	\$1,620.00
	GST	\$81.00
	TOTAL	\$1,701.00

The Landlord also provided a print out from the internet of the vacuum which she claims the Tenants removed.

In reply, the Tenant stated that the walls were damaged when they moved in.

The Tenant further stated that after the second time she used the vacuum it would not charge. She took the vacuum to her friend to check to see if she was the cause. The Tenant was informed that the battery was faulty. The Tenant stated that she purchased a new vacuum for the Landlord and told the Landlord that she would provide her the vacuum when she returned the security deposit.

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.

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.

The Tenants seek return of their security deposit pursuant to section 38 of the *Act*.

Section 38(1) provides that a landlord must either make an application for dispute resolution or return the security deposit to the tenant within 15 days of the end of the tenancy and receipt of the tenant's forwarding address in writing. In this case, the Tenant concedes that she did not provide her forwarding address to the Landlord until such time as she made her Application for Dispute Resolution; this does not satisfy the requirements of section 38(1)(b). As such, the doubling provisions in section 38(6) do not apply to this case.

The evidence confirms that the Tenants did not attend the move out inspection on July 26, 2019.

Section 35 of the *Act* deals with the requirement to inspect the rental unit at the end of the tenancy and provides in part as follows:

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

I find that the Tenants ceased to occupy the rental unit on June 2, 2019. The evidence before me confirms that the parties did not mutually agree upon a date to conduct the condition inspection. Understandably the Tenants wished to do so as soon as the tenancy ended; however, the Landlord was not in Canada at the time.

The Landlord submits that she could not schedule an inspection as she did not have the Tenants' forwarding address. Presumably the parties communicated by telephone, text or email while the Landlord was away, and it would have been possible for the two of them to communicate about an acceptable date.

The *Residential Tenancy Regulations* also deal with condition inspection reports; in particular, sections 16 and 17 deal with scheduling such inspections and provide as follows:

Scheduling of the inspection

16 (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.

(2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The evidence suggests that neither party satisfied their obligation to attempt in good faith to schedule a move out inspection as required by section 16 of the *Regulations*.

The evidence confirms that the Landlord delivered a Notice of Final Opportunity to Schedule a Condition Inspection on July 22, 2019, nearly two months after the tenancy ended.

In this case, the Landlord was out of the country when the tenancy ended on June 2, 2019. She did not have an agent or property manager available to attend on her behalf to inspect the unit and deal with matters related to the end of the tenancy. In the circumstances, I find it unreasonable for the Landlord to request an inspection on July 26, 2019, nearly two months after the tenancy ended. As such I decline to find that the Tenants extinguished their right to return of the deposit for failing to attend the inspection on July 26, 2019.

The Landlord also claims compensation for damages to the rental unit. In support she provided photos of the unit which she claims to have taken on June 13, 2019, when she returned to Canada.

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.

The photos submitted by the Landlord depict minor scuff marks, scratches and dents to the walls, baseboards and door frames. The Tenants deny damaging these areas claiming the condition of the rental unit was the same as when they moved in. On balance, I find the Landlord has submitted insufficient evidence to support a finding that the Tenant *damaged* these areas of the rental unit; rather, I find that these photos depict normal wear and tear. I therefore dismiss the Landlord's claim for compensation for the cost to repair the walls, baseboards and door frames.

The photo of the toilet seat confirms it was broken at the end of the tenancy. The Tenants did not dispute this claim during the hearing before me. I therefore award the Landlord the **\$120.00** claimed for the cost to replace and install the toilet seat.

The Landlord also claims the cost to replace their vacuum. The Tenant stated that she purchased a new vacuum but did not provide it to the Landlord as she was awaiting

return of her security deposit. There is no authority under the *Act* for a tenant to hold the landlord's property as collateral and the Tenants in this case were required to leave the vacuum in the rental unit. While I could simply order the Tenants to provide the replacement vacuum to the Landlord, I have no evidence as to the comparability of the units. As such, I find the Landlord is entitled to recovery of the amount claimed to replace the vacuum in the amount of **\$399.99**.

As the parties have enjoyed divided success, I find they should each pay the cost of their filing fees.

The parties are reminded that a landlord may only request one half of the rent as a security deposit as provided for in section 19 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$519.99** for the cost to replace the toilet seat and vacuum. The Landlord may retain this amount from the \$1,500.00 she holds in trust representing the balance of the Tenants' security deposit.

The Tenant is therefore entitled to the sum of **\$980.01**. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$980.01**. This Order must be served on the Landlord and may be filed and enforce 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: September 4, 2019

Residential Tenancy Branch