



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 Tenant's Application for Dispute Resolution, filed on May 16, 2019, the Tenant requested return of her security deposit and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on May 23, 2019, the Landlord requested monetary compensation from the Tenant for damage to the rental unit, authority to retain the Tenant's security deposit and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 on August 27, 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. What should happen with the Tenant's security deposit?
2. Is the Landlord entitled to monetary compensation from the Tenant?

3. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began September 1, 2018. The rental unit was a furnished unit. The document further indicated that monthly rent was \$2,500.00 and the Tenant paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00.

The Tenant stated that she moved into the rental unit on September 1, 2018 and moved out on March 31, 2019. Copies of the condition inspection reports done at those times was also provided in evidence.

The Tenant provided her email address as her forwarding address on the move out condition inspection report. She testified that when she found out the unit number of her new address, she sent the forwarding address to the Landlord on April 5, 2019. She stated that she sent the package "express post" and kept a copy of the receipt; however that receipt was not provided in evidence before me.

The Tenant confirmed that she did not agree to the \$2,162.89 deducted from her security deposit and pet damage deposit. She further confirmed that was why she did not sign the move out inspection report.

The Tenant disputed the Landlord's claim that she damaged the rental unit and removed items from the unit. She stated that she removed some of the Landlord's decorative items which she described as "knickknacks" and put them in a bag in the laundry area. She further stated that following this she had issues with her washing machine and when the Landlord came to look at it he removed the bag with those knickknacks. In terms of evidence to support this claim the Tenant stated that she has a "dog camera" at her rental unit and was awaiting the footage from the camera to prove that the Landlord removed these items.

The Tenant further stated that the rental unit wasn't in perfect condition when she moved in but that the only "damage" she caused was mounting her TV on the wall.

In response the Tenant's testimony the Landlord testified as follows.

The Landlord stated that he received the Tenant's forwarding address in May of 2019 when the Tenant applied for Dispute Resolution. He denied receiving it at an earlier time.

The Landlord testified that when they did the move out inspection, he went through the damage in detail with the Tenant. He further stated that she told him that she wasn't comfortable providing her forwarding address to him at the time and she would also not sign the report.

The move out condition inspection report was provided in evidence and which include the following:

“END OF TENANCY

Z. Damage to rental unit or residential property for which the tenant is responsible:

Bedroom wall, dryer repair, washer repair, front door paint. 5 hours professional cleaning. Outstanding hydro + Novus bills. Can paint + supplies.”

The Landlord stated that the rental unit was a fully furnished and equipped at the start of the tenancy. He claimed that at the end of the tenancy some of the items were damaged or stained and some of the items were missing. In support of his monetary claim he provided a detailed list which included the following:

amounts charged to paint the bedroom	\$116.50
box spring replacement	\$175.00
dryer repair	\$105.00
damaged missing and items from the kitchen	\$178.00
damaged or missing items in the living room	\$400.00
damaged or missing items in the bathroom	\$105.00
repainting exterior door trim	\$45.00
cleaning	\$150.00
dinner for new tenant due to late move out	\$88.85
outstanding Novus bill	\$162.35
outstanding electricity bill	\$130.06
TOTAL CLAIMED	\$1,655.76

The Landlord also provided photos which depicted the following:

- a small rip to the underside of a box spring mattress;
- 2 photos of the wall repair where television mount was located;
- a burned out pot light;
- water stained cushion;
- water staining/mold on the underside of a mattress;
- refrigerator requiring minor wiping;
- a small amount of lint and dirt at the bottom of a dryer;
- minor amount of paint missing from the door frame

The Landlord claimed that he only received the sum of \$1,992.87 from the property manager for the Tenant's security deposit. He further stated that he has repeatedly asked the Tenant to provide proof that she paid a security deposit of \$2,500.00 yet that proof has not been provided.

When the tenancy ended he provided her with the sum of \$337.11, representing the \$1,992.87 he claimed to have received from the property manager, less the \$1,655.76 in expenses. The Landlord confirmed that he did not have the Tenant's consent to retain any portion of her security and pet damage deposit.

The Landlord also stated that the Tenant's allegation that he entered the rental unit without her consent is false. He stated that he entered the rental unit as the Tenant had damaged the dryer by operating it without a lint trap. The Landlord denied the Tenant's allegation that he removed items from the rental unit and submitted that had that been the case it would have been reasonable for the Tenant to send him a note asking why he took them. He submitted that the absence of such communication indicates that she is not being truthful.

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.

The Tenant seeks return of her security deposit. A tenant's right to return of their security deposit is not triggered until they provide the landlord their forwarding address in writing as required by section 38 of the *Residential Tenancy Act*; in fact, should a tenant fail to do so within a year of the end of the tenancy, the landlord is permitted to retain the funds pursuant to section 39 of the *Act*.

The documentary evidence confirms that the Tenant provided an email address as her forwarding address on the move out inspection report; this is insufficient for the purposes of section 38. The Tenant testified that following this she sent the Landlord a formal letter. The Landlord claimed that he only received the Tenant's forwarding address when he received her Application for Dispute Resolution. The Tenant failed to provide any supporting evidence, such as the tracking number, a copy of the letter or the envelope to corroborate her evidence. While

it is often the case that the parties' testimony will conflict, the onus of proof is on the Tenant to prove that she provided the Landlord with her forwarding address in writing. On balance, I am unable to find that the Tenant provided the Landlord with her forwarding address at any time prior to filing her application.

The Landlord disputed the amount paid by the Tenant in terms of a security and pet damage deposit. The residential tenancy agreement provided in evidence indicates the Tenant paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 for a total of \$2,500.00. Although it may have been the case that the property management company did not return the full \$2,500.00 to the Landlord, I find it more likely than not that the Tenant paid the amounts as indicated on the tenancy agreement. I therefore find that the Tenant paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00 for a total of \$2,500.00.

I will now turn to the Landlord's claim for monetary compensation for damage and cleaning of the rental unit as well as the replacement cost of items he claims the Tenant removed from the rental 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.

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.

The photos submitted by the Landlord indicate that repairs and painting of the bedroom was required due to the Tenant hanging a television. This was not disputed by the Tenant. I therefore award the Landlord the **\$116.50** claimed.

The Landlord also claimed the cost to replace the box spring. I find it unlikely the parties would have lifted the mattress at the beginning of the tenancy to confirm the condition of the box spring. I therefore am unable to find that the rip and staining depicted in the Landlord's photos were caused by this Tenant; as such, this portion of the Landlord's claim is dismissed.

The evidence confirms that the Landlord attended the rental unit to repair the dryer. I accept his testimony that the Tenant operated the dryer without the lint screen; notably she did not deny this allegation when testifying before me. I therefore award him the **\$105.00** claimed for the cost to repair the dryer.

Although the rental unit was furnished, there was no evidence before me that the parties created or reviewed an itemized list of the contents at the start of the tenancy. The Landlord claims the Tenant damaged or removed several items from the kitchen, living room and bathroom. The Tenant claimed that she moved a few of the Landlord's decorative items into a bag and stored them in the laundry room. She denies removing any of the Landlord's possessions from the rental unit. Without corroborating evidence supporting either party's version of events, I am unable to prefer the evidence of one over the other. As the Landlord bears the burden of proving his claim in this regard, I find that he has failed to submit sufficient evidence to support a finding that the Tenant removed or damaged items in the rental. I therefore dismiss his claim for related compensation.

The photos provided by the Landlord show minor wear and tear on the exterior door frame. Pursuant to section 37(2)(a) a tenant is not responsible for reasonable wear and tear. I therefore find that the \$45.00 claim for painting of the door frame is not compensable.

As noted previously, the photos submitted by the Landlord showed a small amount of dust and debris outside the dryer, and the inside of the refrigerator which required minor wiping. Tending to these items would have taken very little time. I therefore find the Landlord has failed to submit sufficient evidence to support his claim for \$150.00 for cleaning.

The Landlord claimed \$88.85 for the cost of the new renter's dinner, due to the alleged late move out by this Tenant. While it was generous of the Landlord to pay for the new renters' dinner, this is not an amount which is recoverable from the Tenant. I therefore dismiss this portion of his claim.

The Tenant did not dispute the Landlord's claim for the cost of the outstanding Novus (\$162.35) and electricity (\$130.06) invoices. I therefore find that the Landlord is entitled to recover these amounts.

In sum, I find the Landlord is entitled to monetary compensation in the amount of \$558.91 for the following:

cost to paint the bedroom:	\$116.50
dryer repair	\$105.00
outstanding Novus bill	\$162.35
outstanding electricity bill	\$130.06
TOTAL AWARDED	\$513.91

Pursuant to sections 38 and 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain the sum of \$513.91 from the Tenant's \$2,500.00 pet and security deposit.

The Tenant is therefore entitled to the balance of her deposits in the amount of \$1,986.09. As she has previously received the sum of \$337.11 from the Landlord, I find she is entitled to receive a further **\$1,648.98** in monetary compensation. In furtherance of this I grant the Tenant a Monetary Order in the amount of **\$1,648.98**. This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

As the parties have enjoyed divided success they shall bear the cost of their own filing fees.

Conclusion

The Tenant's claim for return of her security and pet damage deposit is granted. As she did not provide the Landlord with her forwarding address in writing as required by the *Act*, she is not entitled to double the deposits pursuant to section 38(6).

The Landlord's claim for monetary compensation is granted in part; he is entitled to the sum of \$513.91, which he may retain from the \$2,500.00 security and pet damage deposit paid by the Tenant.

As the Tenant previously received \$337.11 from the Landlord, she is entitled to a Monetary Order for the balance of **\$1,648.98**.

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 18, 2019