Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFT

Introduction

In this dispute, the landlord sought compensation from the tenant pursuant to section 67 of the *Residential Tenancy Act* (the "Act") for various costs related to the condition of the rental unit at the end of the tenancy. The landlord also seeks recovery of the filing fee from the tenant pursuant to section 72(1) of the Act.

The landlord applied for dispute resolution on May 27, 2019 and a dispute resolution hearing was held September 9, 2019 at 1:30 PM. The tenant, the landlord, and the landlord's agent attended the hearing. I gave everyone a full opportunity to be heard, to present affirmed testimony, to make submissions, to call witnesses, and to ask questions. The landlord's agent and the tenant both confirmed that they had served evidence on the opposing party, and no issues of service were raised.

I will first provide a summary of the background and evidence of the parties regarding this dispute. Then, I will apply the law to the facts of the dispute and determine whether the applicant has met the onus of proving each aspect of their case. As I explained to the hearing participants, while I will review evidence submitted that met the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this dispute are considered. Therefore, not everything that the parties may have said during the hearing will necessarily be reproduced below.

Issues

1. Is the landlord entitled to compensation under section 67 of the Act?
2. Is the landlord entitled to recovery of the filing fee under section 72 of the Act?

Background and Evidence

By way of brief background, the tenancy began April 1, 2016 and ended on October 1, 2018 when the tenant moved out. A copy of the written tenancy agreement, which was submitted into evidence, indicated (and the parties confirmed) that monthly rent was $1,150.00 and that there was a security deposit of $575.00. The landlord currently retains the security deposit and seeks to claim this amount against the damages sought in her dispute. The rental unit is a basement suite in a single-family dwelling located in a beautiful neighbourhood in Vancouver.

Prior to the tenancy, the landlord's agent testified that the parties—the landlord, the landlord's agent, and the tenant—conducted a move-in inspection on or about March 19, 2016. A copy of the four-page Condition Inspection Report (the "Inspection Report") was submitted into evidence. The Inspection Report indicated that the move-in inspection date was March 19, 2016, and it was signed on page three by the landlord and the tenant under the "(on Move-In)" section. It was also signed by the landlord under the "(on Move-Out)" section, but not by the tenant.

The landlord's agent testified that during the move-in inspection, it was "believed that the suite was in good order," and that it was "overall good." The Inspection Report contains a column for various items on pages 1 through 4, and across the column on the first page is the hand-written notation, "Overal [*sic*] Good". No notations appear on columns on pages 3 through 4. The landlord's agent further testified that he and the tenant were present during the inspection but he could not recall with certainty whether the landlord was there. (Notwithstanding that she appears to have signed the Inspection Report.)

Two and half-years later, the tenancy came to an end. The relationship between the tenant and the landlord's agent, who also happens to be the landlord's son, had become acrimonious. Both parties had unrelated matters making their way through civil court, and this dispute was filed on May 27, 2019 after a proposed settlement came to nought.

On October 1, 2018, the tenant promptly vacated the rental unit. According to the landlord's agent, there was no contact from the tenant upon moving out. The agent emailed, called, and texted the tenant in an effort to set up a move-out inspection, but to no avail. While the landlord's agent "knew where she lived" (that is, where the tenant had moved to), he did not have her forwarding address in writing.

The landlord's agent testified that he initially sent an email on October 9, 2018 to the tenant in which he invited her to attend for an inspection on October 10, 2018 at 7:00 PM. The email was sent at 4:08 PM and a copy of which was submitted into evidence. I note that the tenant's email address is the same as the email address confirmed by the tenant at the beginning of the hearing. The email also indicates that the agent called the tenant and left a voicemail regarding the invitation. Submitted into evidence was a call log which indicates that three outgoing calls were made by the agent, two of which were made at 3:47 PM and at 4:00 PM, both lasting 38 and 53 seconds respectively. Also submitted into evidence is a screenshot of the landlord's agent sending a text message to the tenant at 3:48 PM on October 9, 2018, in which he writes "Check your email". No response was forthcoming to the agent's first invitation.

On October 11, 2018, the agent sent a second email to the tenant at 12:17 PM, in which he extends a second invitation for an inspection. A copy of the email was submitted into evidence. He proposes a second time of October 12, 2018 at 7:30 PM for the inspection to occur. "I also left you a voicemail," he writes. A copy of a call log was submitted into evidence, indicating that the agent made a phone call to the tenant at 12:14 PM and which lasted 37 seconds. Attached to the email, and tendered into evidence, is a copy of a Notice of Final Opportunity to Schedule a Condition Inspection (the "Notice"). The Notice, which was apparently signed by the landlord, proposes that a condition inspection be conducted on October 12, 2018 at 7:30 PM.

The tenant did not, according to the agent's testimony, attend at either time or respond to any of his communications regarding the final inspection. And so, on October 13, 2018, the landlord and her agent conducted the move-out inspection in the absence of the tenant.

Within the second major column of the Inspection Report, the column titled "Condition at End of Tenancy" is the hand-printed remark "SEE ATTACHMENT". This comment appears on all three pages of the Inspection Report under the second column. A three-page attachment, also submitted into evidence, refers to multiple condition issues with the rental unit, including but not limited to a dirty stove, dirty floor, dusty cabinets, scuffed walls, inoperable lightbulbs, unclean windows, and other various items that are either damaged, scuffed, dusty, or otherwise not in the same condition as they were at the start of the tenancy. The attachment also refers to "One set of keys to the rental unit not returned" and that there was a "Broken laundry rack left behind when tenant moved out. City of Vancouver does not accept it in garbage collection."

In support of the items referred to in the attachment the landlord submitted 52 colour photographs of the items in various states of damage, disrepair or inoperability.

It is for the above-noted damages and problems with the rental unit that the landlord seeks compensation against the tenant. Compensation in the amount of $1,664.68 is being claimed, not including the $100.00 application filing fee, which is also being claimed. A copy of the landlord's Monetary Order Worksheet ("worksheet") was tendered into evidence.

I note that in reviewing the worksheet the landlord included the $575.00 security deposit as an amount being claimed; I explained to the landlord's agent that the landlord does not simply get to "keep" the security deposit because the tenant failed to comply with the Act in providing her forwarding address. Rather, the landlord may seek to apply the security deposit against any amount that may be awarded. He indicated his understanding of my explanation.

The worksheet listed the following amounts being claimed:

1. cleaning rental suite $125.00
2. cleaning rental suite $ 50.00
3. replace lightbulbs $ 92.29
4. replace door lock set $155.36
5. cleaning & painting walls $537.50
6. city disposal fee $ 60.00
7. postage & photocopies $ 69.53

For each item being claimed, the landlord's agent submitted corresponding receipts, invoices, and photographs of the damage and repairs that were undertaken. The agent commented that the first two items should have been included totalling $175.00.

Regarding the door lock set, the landlord's agent testified that he was unable to find a new deadbolt that matched the door handle (the two were originally purchased as a matching set). As such, he had to buy a whole new matching set, hence the higher cost.

Regarding the different dates of the receipts to Home Depot, I asked the landlord's agent why these purchases occurred on different dates, when it might have saved him money by making the purchases all on one date. He explained that his priority was securing the rental unit, hence the immediate purchase of a new lock on October 5,

2018. The amount claimed includes additional time spent driving to Home Depot and additional costs to have the lock and door set professionally installed.

Regarding the burnt-out lightbulbs, the landlord seeks $42.29 for CFL light bulbs and two hours of labour (at $25.00 per hour) for travel time and installation time.

Next, regarding the cleaning costs, a total of seven hours at $25.00 per hour is being claimed in order to clean the rental unit.

As for the laundry rack, the tenant apparently left a laundry drying rack in the backyard. The agent incurred costs to have the rack disposed of, which cost a total of $60.00. This amount is comprised of a $35.00 labour fee to hire a driver, fuel cost of $10.00, and the municipal dumping fee of $15.00. For this claim I note that there was no corresponding receipt for the dumping fee of $15.00.

Finally, regarding the painting costs being claimed, the total amount cost the landlord in excess of the $537.50, but the landlord decided to only seek half the cost of painting the walls. After some effort, various scuff marks would not come off, so the rental unit had to be painted over. The estimate from the painter appears to be $1,700.00. (Though, I note, the painter's notations on various cost estimates are as illegible as a doctor's prescription, with amounts ranging from $1,500 to $1,575 to $1,750.) In response to a question I had, the agent testified that the rental unit was last painted sometime in 2014.

The landlord's agent also seeks litigation related costs in the amount of $69.53. As explained later in this decision, such costs are not recoverable under the Act.

In mid-May 2019 or thereabouts, the landlord finally received the tenant's forwarding address in writing. It was at that point that the landlord filed an application for dispute resolution. The agent testified that he was aware that there was a deadline in which he was required to file his application.

The tenant did not acknowledge, refer to, or dispute the majority of the agent's testimony regarding the condition of the rental unit. She did, however, note that the one item that she did not explicitly dispute was that she did not return the keys and that she perhaps ought to be responsible for the cost of a new deadbolt. However, she disputed that an entirely new set of matching handle and deadbolt was necessary and was willing to pay $22.50 for just a new deadbolt lock.

In explaining the reason as to why she did not return the keys, the tenant testified that she had “gone through hell and back with him [the landlord’s agent],” including dealing with civil litigation, and that she simply wanted to avoid him.

Regarding the condition of the painting in the rental unit, the tenant argued that the “place was never painted” and that the lightbulbs were inoperable at move-in. The parties briefly spoke about a showerhead being replaced; this item was not a matter of compensation in this dispute, so I shall not refer further to it.

Turning next to the Inspection Report, the tenant testified that while she moved into the rental unit on April 1, 2016, the inspection did not in fact occur on March 19, 2016, but instead shortly after move-in. The tenant did not recall the specific date that the move-in inspection occurred.

In rebuttal, the landlord’s agent testified that “I can’t recall the date, but it was done before she moved in.” He recalled being present for the inspection but could not recall whether the landlord herself was present. Neither he nor the landlord were able to recall who wrote the statement “Overal good” on the Inspection Report. Indeed, it was briefly speculated that it was the tenant who wrote the statement.

Finally, the landlord’s agent testified that nothing negative was said about the rental unit when the parties first conducted the inspection, and he argued that the tenant had the opportunity to record on the Inspection Report any deficiencies had there been any.

Regarding the forwarding address, the tenant testified that the landlord’s agent was very much aware of where the tenant had moved. It was into temporary housing, and though she admitted to not providing him with a forwarding “in writing,” he nevertheless had her forwarding address.

During rebuttal, the agent acknowledged that he knew the address of the temporary housing to which the tenant had moved but had not received this address in writing from the tenant.

After I offered the parties a further opportunity to make any final submissions or testimony, and after I asked whether they had any questions about next-steps, the hearing concluded at 2:11 PM.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with the Act, and that they should be compensated for this non-compliance.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities *all four* of the following criteria to be awarded compensation:

1. that the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement;
2. that the loss or damage resulted directly or indirectly from non-compliance;
3. that the applicant has proven the amount or value of the damage or loss; and,
4. that the applicant did what was reasonable to minimize their damage or loss.

In this case, the landlord (through their agent) argued that the tenant breached section 37(2) of the Act, which states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. This section of the Act also requires a tenant to return the keys to the landlord when they move out.

Most significant, the tenant did not dispute any of the landlord's agent's testimony or evidence regarding the alleged damages to the rental unit, including that the walls were scuffed and needed repainting, that the drying rack was left abandoned in the yard, that the rental unit was not cleaned upon move-out, or that the tenant did not return the keys. Based on the Inspection Report's statements at move-in and move-out, and when viewed in combination with the 52 colour photographs of the rental unit, I find that the tenant did not leave the rental unit reasonably clean and undamaged as is required by the Act. Further, based on the tenant's admission to not returning the keys, I further find that the tenant did not return the keys to the landlord when they moved out.

Regarding the lightbulbs, the Inspection Report includes ten instances of “Lighting Fixtures/Bulbs”, and not a single line item was marked or noted to have been missing, damaged, or broken upon the move-in. The tenant signed the Inspection Report which indicated that the lightbulbs were overall “good.” As such, I do not place any weight on the tenant’s testimony that the lightbulbs were not working when she moved into the rental unit. Her acknowledgement, by signing the Inspection Reports, is evidence that the light bulbs were in working order.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states that a tenant is responsible for “Replacing light bulbs in his or her premises during the tenancy,” and that the landlord is responsible for “making sure all light bulbs and fuses are working when the tenant moves in” (page 5).

Thus, I find that the tenant breached section 37(2) of the Act in relation to the lightbulbs.

Based on the above, I find that the landlord has proven on a balance of probabilities that the tenant breached the Act. Further, but for the tenant’s non-compliance with the Act the landlord would not have suffered damage and loss as a result, which is the second criterion that the landlord must prove. Had the tenant (1) replaced the lightbulbs, (2) not damaged the walls, (3) cleaned the rental unit, (4) removed the drying rack, and (5) returned the keys, the landlord would not have had a claim for compensation.

I must now turn to the third criterion, namely, that the applicant has proven the amount or value of the damage or loss for each claimed amount.

First, based on my review of the photographs depicting the unclean condition of the rental unit, a claim of $175.00 based on a $25.00 per hour rate for 7 hours is a reasonable amount in these circumstances. As such, I grant the landlord compensation for this item.

Second, while I find that the cost of $42.29 for 12 CFL lightbulbs to be reasonable, the Inspection Report only indicates a total of 7 broken/inoperable lightbulbs. For this reason, I shall only award the landlord a total of $24.67 ($42.29 ÷ 12 x 7 = $24.67). Regarding the amount claimed for 2 hours of travel time to Home Depot, however, this is rather perplexing. Google Maps indicates an approximate travel time of 6 - 18 minutes from the rental unit to the nearest Home Depot (which is the one corresponding to the receipt), in which case a roundtrip should not take longer than 45 minutes, at most. There is no evidence to explain why it took longer. And I find it unreasonable to accept that it took the landlord’s agent an additional 1 hour to locate and pay for the

lightbulbs. In the absence of any travel log or additional evidence to support the landlord's claim in this regard, I do not accept the claim for 2 hours of travel time.

Third, as for the deadbolt lock, the landlord is entitled to have the rental unit returned to them in the same condition as when the tenant first took possession. In other words, they are entitled to a matching deadbolt and handle as they existed on April 1, 2016. The landlord's claim regarding the cost of the door lock set in the amount of $95.36, and which is supported by a receipt from Home Depot, is reasonable and I find, proven.

Similarly, the claim for 1 hour of travel time in the amount of $25.00 to be a reasonable amount claimed associated with this repair. However, the landlord has not provided any documentary evidence of the cost of "Hired skilled labour to install door lock set" for one hour, such as a receipt or invoice. As such, I dismiss this amount. A total of $120.36 is thus awarded for the replacement door lock set.

Fourth, the landlord's claim for $537.50 for cleaning and painting the walls, which were scuffed rather significantly, is reasonable and supported by documentary evidence. Despite the rather messy estimate provided by the painter, the final cost to paint the rental unit in order to cover up the scuffs is, I find, proven on a balance of probabilities.

That having been said, I mentioned to the parties during the hearing that different elements of a property have different lifespans. This means that depreciation must be applied to an item, where applicable, if being claimed by the landlord.

Residential Tenancy Policy Guideline 40. Useful Life of Building Elements, on page 5, notes that interior paint has a useful life of 4 years. The landlord's agent testified that the rental unit was last painted in "approximately 2014." While the landlord did not provide evidence as to when the rental unit was repainted after the tenancy, about 4 years elapsed between when the unit was last painted, and when the tenant vacated.

Therefore, based on the application of the above-noted policy guideline, the paint in the rental unit had reached the end of its lifespan and was, for all intents and purposes, due for a fresh coat of paint. As such, I must apply a depreciation of 100% to the landlord's claim for painting costs. Therefore, no compensation is awarded for this claim.
Fifth, regarding the claim for disposing of the dryer rack, I find that the documentary evidence regarding a municipal dumping fee of $15.00 to be reasonable and a proven cost. However, there are no receipts for the claimed cost of hiring a driver or for estimated fuel costs. As such, I find that the landlord has not proven these two costs. Therefore, I shall award the landlord $15.00 for this aspect of their claim.

Finally, while a landlord is entitled to compensation related to a tenant breaching the Act, the regulations, or a tenancy agreement, they are not entitled to costs related to the expense of pursuing dispute resolution under the Act. Therefore, I must dismiss the claimed postage and photocopying costs of $69.53.

Regarding the above-noted claims, I find in all instances where the landlord has proven the amount or value of the damage or loss, and where I have awarded an amount, I find that the landlord or their agent did whatever was reasonable to minimize their damage or loss. The cleaning costs are within cleaning industry standards. The lightbulbs were purchased at Home Depot, which is a reasonable retailer and not a high-end outlet for lightbulbs. The matching door lock and handle purchased is, based on my own experience as a homeowner, a reasonable amount. And, other than simply throwing the dryer rack into a garbage bin somewhere (which would have certainly minimized the landlord's loss), dumping the item in the city dump is a reasonable mitigation step.

Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for some, but not all, of the above-noted claims. As such, I grant the landlord a monetary award of $335.03.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful I grant their claim for the filing fee in the amount of $100.00.

The landlord currently holds the tenant's $575.00 security deposit and seeks to apply the security deposit to any amount awarded.

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:

> (1) repay any security deposit or pet damage deposit to the tenant, or
>
> (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord's agent testified that they did not receive the tenant's forwarding address in writing until approximately mid-May 2019, and that they applied for dispute resolution claiming against the security deposit within the statutory deadline. As the tenant did not dispute this submission of the agent, I find that the landlord applied for dispute resolution in compliance with the Act and is entitled to claim against the security deposit.

Finally, I find that the landlord complied with sections 23, 24, 35, and 36 of the Act, which requires the landlord to complete a Condition Inspection Report. The landlord also complied with both the Act and the *Residential Tenancy Regulation* in offering the tenant two opportunities to conduct the move-out inspection. Therefore, the landlord has not lost their right to claim against the security deposit.

I grant the landlord a monetary award of $435.03. An amount of $435.03 may be taken from the tenant's security deposit, and the balance of $139.97 of the security deposit is to be returned to the tenant within 15 days of the landlord's agent receiving this decision. A monetary order for the tenant is issued along with this decision, should enforcement of this refund be required.

The landlord's monetary award and the tenant's monetary order are calculated as follows:

AWARDED CLAIM	AMOUNT
Cleaning rental unit	$175.00
Replace lightbulbs	24.67
Replace door lock set	120.36
City disposal fee	15.00
Filing fee	$100.00
LESS security deposit	($575.00)
Total:	- $139.97

Conclusion

I grant the landlord a monetary award of $435.03. All amounts and claims not awarded are otherwise dismissed without leave to reapply.

I grant the tenant a monetary order in the amount of $139.97, reflecting the balance owing by the landlord to the tenant. If necessary, this order may be served on the landlord, and, filed in and enforced as an order of the Provincial Court of British Columbia.

This decision is final and binding, unless otherwise permitted under the Act, and is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 12, 2019

Residential Tenancy Branch