



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed June 13, 2019, in which the Landlord sought monetary compensation from the Tenant for cleaning and repair of the rental unit, authority to retain the security deposit, as well as recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on September 23, 2019. Only the Landlord's representative Y.S. called into the hearing. She gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 2:00 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's representative and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Representative testified that they served the Tenant with the Notice of Hearing and the Application on June 19, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of June 24, 2019. The Landlord's Representative also testified that in addition to sending the package by registered mail, they also informed the Tenant of the hearing by sending an email to the Tenant. The Tenant responded to the Landlord's email and the parties discussed the upcoming hearing as well as a possible settlement. I accept the Landlord's evidence in this respect and I proceeded with the hearing in the Tenant's absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's 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 Landlord's Representative confirmed her email addresses during the hearing as well as her understanding that this Decision would be emailed to them.

Issues to be Decided

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

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this one-year fixed term tenancy began June 1, 2018. Monthly rent was \$2,900.0 and the Tenant paid a security deposit of \$1,450.00.

The Landlord claimed monetary compensation for the following expenses:

Repairs and replacement	\$2,940.71
Garbage removal	\$210.00
Cleaning costs	\$929.25
Filing fee	\$100.00
TOTAL CLAIMED	\$4,179.96

In support of the claim the Landlord provided a comprehensive move out condition inspection report as well as photos of the rental unit, and invoices for the amounts claimed.

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. In this case, the Landlord has the burden of proof to prove their claim.

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.

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.

After consideration of the Landlord's undisputed testimony and evidence, and on a balance of probabilities I find as follows.

I accept the Landlord's evidence that the Tenant did not clean and repair the rental unit as required by the tenancy agreement and section 37 of the *Act*. In this regard I am persuaded by the photos submitted by the Landlord. As well, the Landlord's agent's testimony and photos are consistent with the comprehensive condition inspection report filed in evidence, which according to section 21 of the *Regulations* is to be afforded significant evidentiary weight. Finally, I find that the amounts claimed by the Landlord correspond with the invoices filed in support and are consistent with the amount of work required to clean and repair the rental unit.

For these reasons I find the Landlord is entitled to the monetary compensation claimed. As the Landlord has been successful in their application they are also entitled to recover the filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$4,179.96** for the following:

Repairs and replacement	\$2,940.71
Garbage removal	\$210.00
Cleaning costs	\$929.25
Filing fee	\$100.00
TOTAL AWARDED	\$4,179.96

I authorize the Landlord, pursuant to sections 38 and 72 of the *Act* to retain the Tenant's \$1,450.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$2,729.96** for the balance due. This Order must be served on the Tenant and may be filed and enforced 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: October 9, 2019

Residential Tenancy Branch