



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for authority to keep all or part of the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The landlord's agents and the listed respondents/tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this tenancy began on February 1, 2014, and the ending monthly rent was \$878.00.

The landlord submitted that the tenancy ended on July 10, 2019; however, the tenant submitted that it ended on June 22, 2019. The tenant also submitted that she received an indefinite stay in the British Columbia Supreme Court for the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant paid a security deposit of \$380.00, which has been retained by the landlord.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid hydro	\$208.50
2. Move-out cleaning	\$500.00
3. Kitchen cabinets	\$1,577.53
4. Kitchen counter tops	\$448.00
5. Prorated rent, July 1-10, 2019	\$283.23
6. Filing fee	\$100.00
TOTAL	\$3,117.26

The landlord's relevant evidence included, but was not limited to, the written tenancy agreement, invoice for hydro, photographs of the rental unit, a receipt for cleaning, a statement from the tenant notifying the landlord of her intent to vacate the rental unit on July 10, 2019, an invoice for kitchen cabinet and sink replacement, and an invoice for a laminate counter top.

The landlord confirmed there was not a move-in condition inspection report as they were not provided one by the former property managers.

In support of their application, the landlord's agents provided the following evidence:

Unpaid hydro-

The tenant agreed that she owed this amount.

Move-out cleaning-

The landlord's agents submitted the rental unit required hours of cleaning after this tenancy ended, due to the extremely dirty condition. The landlord's agent said the rental unit was still full of the tenant's personal possessions, there was garbage left, the toilet seat was broken and left propped up against a wall, and that there was fecal matter to clean up, among other issues.

The landlord's agent CM said she and her partner cleaned for well over 10 hours, although the tenant was only charged for 10 hours. She also said that she believed the state of the rental unit was hazardous to her health, requiring her to wear a mask.

The landlord's agent submitted that they were unsuccessful in scheduling a move-out inspection with the tenant, as she left no forwarding address. The landlord's agent said they continued to request an address from the tenant by email, and ultimately received one by email on August 29, 2019.

The landlord referred to their photographic evidence to prove the condition of the rental unit.

In response, the tenant submitted that as there was no move-in inspection report, the landlord cannot prove their claim. The tenant also said that the rental unit was dirty when she moved in and the condition was horrible. The tenant said that there was debris in the rental unit when she moved in.

The tenant disputed all the landlord's photographs as there were none from her move-in date.

Kitchen cabinets; kitchen counter tops-

The landlord's agent said the tenant destroyed the kitchen cabinets and countertops to the extent they had to be replaced. The landlord's agent said the laminate had been ripped and destroyed, and that he had never seen that kind of destruction after a tenancy ended.

The landlord referred to their photographic evidence.

In response, the tenant submitted that the kitchen cupboards were falling apart during her tenancy. The tenant confirmed that she did not address the issues with the kitchen

cupboards with the landlord's agent at the time, as he was a raving alcoholic and she believed her life was in danger with him there.

The tenant said that the landlord was just going to rip out the kitchen cupboards anyway.

Prorated rent, July 1-10, 2019-

The landlord's agent said they are requesting this amount as the tenant failed to pay the monthly rent for July 2019, and vacated on July 10, 2019. Therefore, the landlord's agent said they are entitled to the loss of rent revenue.

In response, the tenant submitted that the tenancy ended on June 22, 2019.

Analysis

Based on the relevant evidence before me, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

As to the costs claimed by the landlord associated with cleaning and replacing kitchen building elements, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard.

First, in addressing the tenant's submission that the landlord extinguished their right to claim against the security deposit because there was no move-in condition inspection report (CIR), I agree, under section 24(2) of the Act. I, however, further find that the landlord is able to still seek compensation against the tenant pursuant to section 7(1) of the Act for claims for damage arising out of the tenancy.

Unpaid hydro-

As the tenant agreed to this amount, I grant the landlord a monetary award of \$208.50.

Move-out cleaning-

I have reviewed the landlord's photographic evidence and find them to be persuasive and compelling. I find photos show that the tenant left the rental unit extremely dirty and had damage to the rental unit even more than the landlord's agent described at the hearing.

There were large amounts of debris and garbage to be removed.

I find the bathroom was left in such a wholly unclean and unhygienic state, the landlord's agent did not fully describe the condition at the hearing.

Therefore, on a balance of probabilities, I find the landlord submitted sufficient evidence to prove their claim for cleaning and grant them a monetary award of \$500.00 as claimed.

Kitchen cabinets; kitchen counter tops-

After reviewing the landlord's photographic evidence, I find that the landlord submitted sufficient evidence that the damage to the kitchen cabinets and counter tops was beyond reasonable wear and tear. I find the units were left unusable at the end of the tenancy. I find it was reasonable and necessary for the landlord to replace the kitchen cupboards and counter tops.

I find the landlord's costs to be reasonable, and I therefore approve the landlord's monetary claim for kitchen cabinet replacement for \$1,577.53 and kitchen countertop replacement for \$448.00.

Prorated rent, July 1-10, 2019-

While the tenant may have had a stay of execution of the landlord's for an order of possession of the rental unit, I find the landlord's evidence shows that the tenant provided her written notice to vacate on July 10, 2019.

I therefore accept the tenant vacated the rental unit on July 10, 2019, and the landlord provided undisputed evidence that the monthly rent for July 2019 was not paid.

I find it reasonable to award the landlord as claimed for a loss of rent revenue for July 1-10, 2019, in the amount of \$283.23.

As the landlord's application was successful, I grant the landlord recovery of their filing fee of \$100.00.

Due to the above, I find the landlord is entitled to a total monetary award of \$3,117.26 against the tenant, comprised of \$208.50 for unpaid hydro, move-out cleaning for \$500.00, kitchen cabinet replacement for \$1,577.53, kitchen countertop replacement for \$448.00, prorated rent for \$283.23, and recovery of their filing fee for \$100.00.

Although the landlord extinguished their right to claim against the tenant's security deposit, the landlord has retained it.

In these circumstances, I find it appropriate to set-off the amount of the tenant's security deposit of \$380.00 from their total monetary award of \$3,117.26, and grant the landlord a monetary order for the balance due in the amount of \$2,737.20.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for monetary compensation is granted as they have been granted a monetary award of \$3,117.26, and directed to retain the tenant's security deposit in partial satisfaction.

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: November 21, 2019

Residential Tenancy Branch