



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution filed October 4, 2019 in which the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 12, 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 attended a prior hearing on July 11, 2019 following which the Tenant was awarded return of double his security deposit and recovery of the filing fee. The file number for that matter is recorded on the unpublished cover page of this my Decision. As the Landlord has already been ordered to return the Tenant's security deposit her request for authorization to retain the deposit is no longer applicable.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began in February of 2019. She stated that she received the Tenant's security deposit of \$450.00 on February 11, 2019 and the Tenant began moving in at that time. The parties signed a tenancy agreement on February 28, 2019 indicating that monthly rent was \$900.00.

The Landlord stated that the Tenant moved out some time between March 16-19, 2019. She stated that although the Tenant paid rent for March 2019 he did not give 30 days notice to end the tenancy. The Landlord was reminded that she did not make a claim for loss of rent in her application.

The Landlord claimed the sum of \$172.19 for repairs. In this respect she stated that she had to "replace all the parts" of the toilet because the Tenant attempted to fix the toilet and in turn damaged it. She stated that the Tenant called her to inform her the toilet was plugged; she responded that he should just leave it and she would attend to it the next day. She confirmed there was only one toilet in the rental unit.

The Landlord testified that when she arrived the next day, there was water all over the place and towels all over the floor. Of the \$172.19 claimed, the Landlord claimed that she paid a \$60.00 labour charge for repairs to the toilet.

The Landlord also claimed for the cost to replace a towel rack and a splash guard which she replaced during the tenancy because the Tenant "complained" about the prior ones.

In terms of the \$100.00 in housekeeping costs at the end of the tenancy, she testified that she hired, a cleaner, C.L., who cleaned the fridge, the stove, the cupboards and the floors.

The Landlord also called C.L. as her witness. C.L. confirmed that she charged the Landlord \$100.00 for her time. She stated that she spent 5 hours cleaning the rental unit at the end of the tenancy including cleaning the oven and stove, the floors, the carpet, the washing machine, the dryer and the bathroom. C.L. confirmed that she appeared

as the Landlord's agent at move out and completed the move out inspection; she further stated that when she did the inspection report with the Tenant she thought he had cleaned sufficiently, but once he moved out she saw that it needed further cleaning.

In response to the Landlord's claim the Tenant testified as follows.

In terms of the Landlord's repair claims the Tenant stated that the toilet flooded outside the tank and the bowl. He testified that the only thing he did was to turn the water off to stop the flooding. He further stated that he was not aware of what caused the flooding, and that he did not try to repair anything.

In terms of the cleaning costs the Tenant stated that he did not believe that the rental unit required cleaning at the end of the tenancy, nor did the Landlord's agent indicate the rental unit required cleaning when she filled out the move out inspection report. He also noted that they uploaded a video of the rental unit confirming it was cleaned when the tenancy ended.

The Tenant also alleged that the move out condition inspection report was altered after it was completed and noted that the Landlord submitted the altered copy in evidence.

In reply to the Tenant's testimony the Landlord confirmed that she added notations to the move out inspection after a copy was given to the Tenant as he refused to sign it and she believed it had not yet been completed.

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 testimony and evidence before me, and on a balance of probabilities I find the following.

The Landlord alleged the Tenant damaged the toilet while attempting to repair it. The Tenant testified that the toilet overflowed, and that all he did was turn the water off. The evidence indicates the Landlord replaced the tank parts. I was also not provided with any evidence as to the age of the toilet. It is unclear whether the replacement parts were required due to normal wear and tear, as a preventative measure, or misuse on the Tenant's part. As the Landlord bears the burden of proving her claim, I find she has submitted insufficient evidence to support a finding that the Tenant caused damage to the toilet. I therefore dismiss her claim in this regard.

I will now address the Landlord's claim for cleaning costs. Section 21 of the *Regulations* provides that a condition inspection report, conducted in accordance with the *Act* and the *Regulations*, is to be given significant evidentiary weight. In this case, I find the Landlord altered the move out condition inspection report after a copy was given to the Tenant. As such, I give no consideration to the notations added by the Landlord after the report was completed.

The Landlord's agent confirmed she completed the report. She further confirmed that the unit appeared clean when she performed the move out inspection. The Tenant also testified that the agent informed him at the time that the unit was left clean and undamaged.

Section 37(2)(a) requires a tenant to leave the rental unit "reasonably clean". The onus is on the Landlord, or her representative, to *thoroughly* inspect the unit during the move out inspection. The reason is that if the Landlord believes some minor cleaning is required the Tenant will be able to attend to this prior to leaving the rental unit and receive their full security deposit. In this case, the Condition Inspection Report confirmed the rental unit was left reasonably clean. While the Landlord and her agent may have felt additional cleaning was required *after* the inspection, I find, on balance, that the Tenant left the unit reasonably clean as required by the *Act*. I therefore dismiss the Landlord's claim for cleaning costs.

I similarly dismiss the Landlord's claim for the towel rack and splash guard she replaced during the tenancy. While she may feel that she was simply complying with the Tenants' requests, she chose to make these purchases and there is nothing in the *Act* which would make these costs recoverable from the Tenant. Notably, the items remain in the rental unit such that the Landlord continues to have the full benefit.

As the Landlord has been unsuccessful in her Application, she is not entitled to recover the filing fee.

Conclusion

The Landlord's claim is dismissed in its entirety.

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 28, 2019

Residential Tenancy Branch