



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on August 7, 2019, in which the Landlord sought monetary compensation from the Tenant for unpaid rent, damage to the rental unit and recovery of the filing fee; the Landlord also sought authority to retain the Tenant's security deposit towards any amounts awarded.

The hearing of the Landlord's Application was conducted by teleconference at 1:30 p.m. on November 28, 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.

Preliminary Matter

The Tenant claimed she did not receive the Landlord's evidence. The Landlord testified that his evidence was sent to the Tenant by registered mail. He was not able to provide the tracking number as the package was sent by his brother.

Despite the Tenant's claim that she did not receive the Landlord's evidence, she responded in detail to each of the Landlord's claims. I find, on a balance of probabilities, that the Tenant received the Landlord's evidence and proceeded with the hearing.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent and damage to the rental unit?
2. Should the Landlord be permitted to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agent testified that this tenancy began September 1, 2018 for a fixed term to June 30, 2019. Monthly rent was \$2,200.00. The Tenant also paid a security deposit in the amount of \$1,100.00.

The tenancy ended on June 30, 2019.

The Landlord's agent stated that the Tenant did not give 30 days notice to end her tenancy. In late June, the Landlord sent a text message to the Tenant asking her to provide further post-dated cheques; in response the Tenant responded that she was moving out June 30, 2019 and she did not believe she had to give 30 days notice.

The tenancy agreement was provided in evidence and which provided that the tenancy was for a fixed term from September 1, 2018 to June 30, 2019. The agreement also provided that at the end of the fixed term the tenancy would continue on a month-to-month basis, or another fixed length of time, unless the tenant gave notice to end tenancy at least one clear month before the end of the term.

The Landlord claimed \$1,200.00 for the cost to replace the carpets. The Agent stated that a new tenancy began in August such that the Landlord did not replace the carpet and was awaiting the results of this hearing before undergoing the replacement.

The Landlord's agent stated that the Tenant used spray bleach to clean the carpet which resulted in the colour change where the bleach was sprayed. The Landlord provided photos in evidence showing the carpet discolouration from the spot cleaning with bleach.

In terms of the age of the carpet, the Landlord stated that the carpet is original, and the property is four years old.

The Landlord also sought compensation for the cost to replace the powder room door. The Landlord provided a photo of the powder room door showing a significant crack in the bottom of the door. The Agent stated that the Tenant told him that one of her sons slipped and hit the door.

The Agent stated that the door could not be fixed and must be replaced. He stated that the \$400.00 claimed was the midrange estimate of \$300-500 including replacement, installation and delivery.

The Landlord confirmed the door was also original such that it was also approximately four years old.

In reply to the Landlord's claims the Tenant testified as follows.

The Tenant testified that she gave the Landlord notice that she would move out on June 20, 2019. She stated that the Landlord send a text message asking the Tenant when she was moving out. She told the Landlord that she would move out as per the tenancy agreement. She confirmed she did not understand that she had to give 30 days notice.

In terms of the carpet, the Tenant stated that she used a carpet spot cleaner to clean the carpet. She stated that any discolouration would be gone if the Landlord professionally cleaned the carpets. The Tenant also stated that when they moved out no one noticed any discolouration on the move out inspection.

In terms of the powder room door, the Tenant stated that her son slipped on the carpet and hit the door. She claimed she did not look at the door at the time. She stated that when they did the move out inspection the Landlord noticed the crack but told her the door was "okay and don't need to worry".

The Tenant also claimed that the door was inexpensive to replace and provided a copy of a printout from the internet showing the door would cost. The information she provided indicated the door was \$64.99 to replace.

The Tenant confirmed that she paid a security deposit of \$1,100.00. The Tenant testified that she provided the Landlord with her forwarding address on August 3, 2019. She claimed she sent it by registered mail, a copy of the receipt for the package was provided in evidence and which confirmed the letter was sent on August 3, 2019.

In reply the Landlord's agent stated that the carpet's colour change was very obvious when it dried. He stated that at the time of the inspection the carpet was still wet, and they did not realize the extent of the bleaching. He confirmed they did not clean the carpet professionally as they believed it would not have dealt with the obvious bleaching.

The Landlord's agent confirmed that the \$64.99 door was similar to the one in the rental unit.

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.

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

The residential tenancy agreement confirmed that this was a fixed term tenancy, following which the tenancy was to continue on a month to month basis. The agreement specifically provided the tenancy would end only if the Tenant gave one clear month's notice to end the tenancy. In this case, the Tenant failed to give such notice, as such I find the Landlord is entitled to compensation for the unpaid rent for the month of July 2019.

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 Landlord claimed the replacement cost for the carpet, claiming the Tenant used a spray bleach product which discoloured the carpet. The Tenant submitted that the difference in colour was not noticeable when the move out inspection occurred. She further submitted the Landlord had not attempted to clean the carpet which may have dealt with any colour differences.

The Landlord confirmed they did not attempt to professionally clean the carpet as they believed the discolouration would not be resolved by cleaning. While that may be the case, I find the Landlord is not entitled to the replacement cost without attempting to

clean the carpets, as in doing so they are failing to mitigate their losses. I therefore dismiss the Landlord's claim for the cost to replace the carpet.

On balance, I find the Tenant, or her son, damaged the powder room door. I find the Landlord is entitled to the replacement cost.

As discussed during the hearing, when a landlord seeks the replacement cost of a particular item, consideration must be given to the age of that item. *Residential Tenancy Policy Guideline 40* provides that a door has a life span of 20 years. I accept the Landlord's evidence that the doors were approximately 4 years old. As such, the Landlord's claim is to be discounted by 20%, such that the Landlord maximum entitlement is \$320.00.

The Tenant disputed the amount claimed by the Landlord alleging that the replacement cost of the door was much less than the amount claimed. She provided an online estimate of the replacement cost of the door.

I accept the Landlord's evidence that the amount claimed included the cost to deliver and install the door, which are necessary for its replacement. I therefore award the Landlord **\$320.00**.

As the Landlord has been substantially successful, I also award the Landlord recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,620.00** for the following:

Loss of rent	\$2,200.00
Cost to replace powder room door (discounted by 20%)	\$320.00
Filing fee	\$100.00
TOTAL AWARDED	\$2,620.00

I authorize the Landlord to retain the Tenant's \$1,100.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,520.00**. 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: December 16, 2019

Residential Tenancy Branch