



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 an Application for Dispute Resolution, filed on August 15, 2019, in which the Landlord sought monetary compensation from the Tenants, authority to retain their security deposit and recovery of the filing fee. By Amendment dated August 29, 2019 the Landlord reduced her monetary claim to \$800.00.

The hearing of the Landlord's Application was scheduled for teleconference for 1:30 p.m. on December 9, 2019. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 1:56 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 and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenants with the Notice of Hearing and the Application on August 29, 2019 by registered mail to the forwarding address provided by the Tenants on the move out condition inspection report. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 Tenants were duly served as of September 3, 2019 and I proceeded with the hearing in their 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 specifically reference by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord confirmed her email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord provided a copy of the residential tenancy agreement in evidence which provided that the tenancy began February 1, 2019. The Landlord testified that the Tenants actually moved in the prior summer, and on February 1, 2019 the parties entered into a written tenancy agreement. The agreement provided that the Tenants were to pay \$2,000.00 in rent.

Also pursuant to the agreement the Tenants were obligated to pay a security deposit in the amount of \$1,000.00 and a pet damage deposit in the amount of \$500.00. The Landlord advised that the Tenants paid the \$500.00 pet damage deposit but only paid \$300.00 of the security deposit such that the Landlord holds \$800.00 in trust.

The Tenants moved from the rental unit on August 2, 2019 and provided the Landlord with their forwarding address on that date. The Landlord applied for dispute resolution on August 15, 2019.

On her Application the Landlord indicated that she sought monetary compensation in the amount of \$1,047.98 for the following:

Cleaning	\$212.50
Dump run	\$175.00

HDMI cable	\$22.39
Carpet and upholstery cleaning	\$204.23
Replacement cost of 2 area rugs	\$200.00
Replacement cost for dresser	\$50.00
2 days occupancy for overholding tenancy	\$129.02
Replacement of broken refrigerator trays	\$50.00
Replacement of garbage can	\$25.00
TOTAL CLAIMED	\$1,047.98

The Landlord provided photos of the rental unit showing the condition of the rental unit at the end of the tenancy. She also provided invoices and receipts for the above claims.

The Landlord also provided a copy of the move out condition inspection report. She confirmed the Tenants participated in the inspection. The report also confirms the rental unit was left damaged and not cleaned and indicates the items which were missing or damaged at the end of the tenancy.

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.

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.

I am satisfied, based on the Landlord's undisputed testimony and evidence, that the Tenants failed to clean the rental unit as required by the *Act* and the *Regulations*. This is confirmed by the Move Out Condition Inspection Report, which is to be afforded significant evidentiary weight pursuant to section 21 of the *Residential Tenancy Regulation*; for clarity I reproduce that section as follows:

Evidentiary weight of a condition inspection report

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I also accept the Landlord's evidence that the Tenants overheld their tenancy by two days and I award her related compensation.

I also accept the Landlord's evidence that many items were missing or damaged at the end of the tenancy and required replacement; I therefore award her the replacement cost.

I find the Landlord has supplied sufficient evidence to support a finding that she is entitled to the \$1,047.98 claimed in addition to the \$100.00 filing fee. However, as noted she amended her

application on August 29, 2019 to reduce her claim to \$800.00. During the hearing she confirmed that she reduced her claim to the \$800.00 she holds in trust for the security and pet damage deposit as she did not believe she would be able to collect any further amounts from the Tenants. As such, I award her the \$800.00 claimed.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants' security and pet damage deposit of \$800.00 towards the amounts awarded.

Conclusion

The Landlord's amended claim for \$800.00 for unpaid rent, damage to the rental unit and cleaning costs is awarded. The Landlord may retain the Tenants' security deposit and pet damage deposit towards the amounts awarded.

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 11, 2019

Residential Tenancy Branch