



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL, MNRL-S
FFT, MNSD, MNDT

Introduction

This hearing convened as a result of cross applications in which the parties sought monetary compensation from the other, orders with respect to the security deposit and recovery of the filing fee.

The hearing of the cross applications was scheduled for teleconference before me at 1:30 p.m. on October 25, 2019; the hearing did not complete and was adjourned to 11:00 a.m. on December 17, 2019. Both parties called into the hearings 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 confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Is the Tenant entitled to monetary compensation from the Landlords?

3. What should happen with the Tenant's security deposit?
4. Should either party recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which confirmed that this tenancy began September 1, 2015. Monthly rent was \$1,350.00 at the time the tenancy began and was not raised during the tenancy. The Tenant paid a security deposit of \$675.00 on August 19, 2015.

In addition to the documentary evidence filed by the Landlords, the Landlord, M.L., testified.

The tenancy ended pursuant to the Tenants' notice which was provided to the Landlords on June 8, 2019. The Tenant indicated that she would be remaining in the rental unit until July 15, 2019.

The Landlord testified that they re-rented the rental unit as of August 1, 2019.

The Landlord stated that the Tenant paid only half a months' rent of \$675.00 on July 1, 2019.

In the within hearing the Landlord sought monetary compensation for the following:

Unpaid rent for July 2019	\$675.00
Carpet cleaning	\$121.00
General cleaning and repairs to the walls	\$395.00
Estimate to replace flooring (60% of \$2,522.64)	\$1,513.58
Postage	\$20.97
Pictures	\$17.43
Halogen light bulb and smoke detector battery replacement	\$31.08
Batteries for the TV remote and keyless entry	\$17.91
Oven cleaner and gloves	\$22.36
Replacement of front door heat register	\$8.39
Front entry light bulb replacement	\$7.04
Replacement of blinds	\$29.03
Rekeying of locks	\$157.72
Labour costs	\$105.00
Filing fee	\$100.00
TOTAL CLAIM	\$3,221.51

In support of her claim the Landlords submitted photos which they took on July 26 and July 28, 2019 respectively.

The Landlords also provided a copy of the Move out Condition Inspection Report confirming the condition of the rental unit on the day of the final inspection. The Tenant did not attend the inspection.

The Landlord testified that on June 10, 2019 (which she noted was accidentally dated July 10, 2019) she hand delivered a piece of paper to the Tenant wherein she asked the Tenant to set up a time for the Move out Condition Inspection. The Landlord stated that the Tenant did not propose an alternate date for the Inspection.

The Landlord then prepared a Notice of Final Opportunity to Schedule a Condition Inspection which was taped to the rental unit door on July 8, 2019. In this Notice the Landlords proposed "any time before July 24, 2019 at 6:00 p.m." as that was the date the cleaners were attending. The Landlord confirmed that she also sent a text message to the Tenant proposing that they meet at the rental unit some time before July 24, 2019 to go through the unit.

The Landlord stated that the first she heard from the Tenant was the Tenant's Application for Dispute Resolution.

The Landlords sought the replacement cost for the flooring due to damage in the form of severe scratches on the flooring which they claim was caused when the Tenant moved out. She stated that the damage was in the front entry to the house and the bathroom.

The Landlords submitted that the drag marks on the floor were so severe that the cost to repair would exceed the cost to replace as the top two layers of the finish were scratched off. This was noted on the invoice provided by her flooring specialist (she also noted that he recorded the wrong date as June 13, 2019, as opposed to August 13, 2019 as he used excel and this program was new to him).

The Landlords also intended to call their flooring specialist to testify; however, on the date of the continuation of the hearing he was not able to call into the hearing as a result of an emergency.

In written submissions the Tenant suggested the flooring was damaged during the renovation; in response the Landlord stated that the flooring was covered with paper during the kitchen renovation. She also stated that they did not haul anything into the unit except for a door and drywall.

The Landlords also disputed the Tenant's suggestion that the marks on the bathroom floor were from an improperly installed door; to this end she stated that the marks are clearly in the centre of the floor, not near the door.

The Landlord confirmed that the floors were installed on August 24 and 25 in 2015. She noted that this was also noted on the move in condition inspection report which the Tenant signed off on. Due to the age of the flooring they sought a depreciated cost.

The Landlord testified that at the end of the tenancy the lights needed to be replaced and batteries in the TV remote and keyless entry were both dead and the smoke detector did not have a battery in it.

The Landlord noted that the oven and burners were not cleaned. She stated that she had an agreement with her cleaner that she would do a pre-emptive soak to make sure the oven and stove could be cleaned.

The Landlord also testified that the heat register cover in the entry way was cracked in half. She stated that it looked like someone had stepped on it.

In terms of the blinds the Landlord stated that the Tenant agreed that two of the blinds were damaged by her dogs.

The Landlord testified that the keys were left sitting on the countertop. She stated that the keys did not work, and they had to get a re-key on the keyless entry. She claimed the cost of the locksmith to deal with this issue.

The Landlords also claimed \$105.00 in labour costs their time to deal with holes in the walls, remove and replace the blinds as well as dealing with the grass. She testified that there were about 400 pin holes as the Tenants like to do crafts and post them on the wall. The Landlords' cleaner asked her to fill them with poly fill and then she could wipe them down and hopefully that would deal with the holes. She confirmed that this in fact did work.

In response to the Landlords' testimony and submissions the Tenant testified as follows.

In terms of the Landlords' monetary claim for unpaid rent the Tenant stated that she gave the Landlords as much notice as she could. She stated that she had everything moved out and cleaned on July 1, 2019. She also stated that the Landlords made it impossible for her to live there. She confirmed that she gave her notice on June 7, 2019.

The Tenant stated that when she left the lights bulbs and batteries were all working. She also stated that the Landlords had "finicky lights" and insisted on replacing the bulbs during the tenancy.

The Tenant stated that she locked the keyless entry when she left and as such submitted that the lock worked.

In terms of the TV remote she stated that she did not use the remote as she had her own universal remote.

She stated that she also never used the keys the Landlords gave her as she used the keyless entry.

In terms of the carpet cleaning the Tenant confirmed that she did not have the carpets cleaned; as such she consented to the Landlords receiving compensation for **\$121.00**.

In terms of the general cleaning the Tenant stated that she cleaned the rental unit as best as she could. She also stated that she was on crutches and did her best and also had her sister help.

The Tenant stated that the cleaning company hired by the Landlords is not real. She provided an email from the business licensing department confirming that the company does not exist. The Tenant stated that the person who purported to do the cleaning, D.F., is a close friend of the Landlords and is a nurse and does not have a cleaning company.

The Tenant claimed that she cleaned the stove but did not pull out the oven because a big kitchen renovation was just done such that it had just been pulled out when the renovation started in April 30, 2019.

In terms of the heat register cover the Tenant stated that she did not break it and did not know it was broken.

In response to the Landlords' request for the cost to replace the floors the Tenant denied causing any damage. The Tenant stated that the scuff marks in the bathroom were a result of the improperly installed bathroom door. She also stated that the bathroom and kitchen were both renovated such that she believed the scratches were caused during the renovations.

In terms of the holes in the walls the Tenant stated that she put photos up and Christmas lights and there were not "hundreds of holes" in the walls as alleged by the Landlords.

With respect to the move out condition inspection, the Tenant denied receiving a note from the Landlord proposing an inspection. She stated that the first time she received the piece of paper about the inspection was when she received the Landlords' Application package, which was after the inspection had already occurred. The Tenant also testified that she did not receive any emails or text messages from the Landlords in this regard.

The Tenant stated that she gave the Landlords her forwarding address (which was her work address) a couple days after she gave notice.

In terms of the Tenant's monetary claim, The Tenant claimed return of rent paid during the period of time when she was unable to use her kitchen. She stated that she moved out for the month of May 2019 when the kitchen renovation occurred; initially she stayed with the Landlords for a few days (which was very awkward) and then moved in with her sister and stayed there for the rest of the time. The Tenant claimed that she was not in the rental unit from April 30, 2019 to the last week in May, as the kitchen was not functional. She stated that she did not have countertops until June 18, 2019 such that she had limited use of the kitchen from June 1-18.

In support of her claim the Tenant submitted photos of the renovation indicating the extent of the renovation. The Tenant also submitted a statement from her father who was involved in renovations to the bathroom and the kitchen.

The Landlord responded that there was a kitchen renovation which started April 30, 2019. She stated that the cabinets were installed on May 16, 2019 by the Tenant's father. The Landlord stated that the Tenant could have lived there during the renovation, as there was still running water and power.

The Landlord stated that the bathroom door was never installed or adjusted by the Landlords and there is lots of clearance on that door.

The Landlord also claimed that on the day of move out they could hear the Tenant's movers dragging items along the floors. The Landlord claimed that she went and talked to the movers and told them not to drag the furniture.

The Tenant replied that she was there during the move out when the dressers and heavy stuff left the rental unit and at no time were the items dragged along the floor.

The Landlord also stated that the Tenant did not give a forwarding address and the only way she was aware of the Tenant's address was when she received a mail redirect from Canada post.

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.

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.

I will first deal with the Landlords' claim for unpaid rent for July 2019.

The evidence before me confirms the Tenant paid only ½ a month's rent for July 2019. The Landlords seek monetary compensation for unpaid rent in the amount of \$675.00 representing the balance of the July 2019 rent.

A tenant may end a tenancy provided that the notice complies with sections 45 and 52 of the *Act*, which provide as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

In the case before me I find the Tenant gave notice to end her tenancy on June 8, 2019. Pursuant to section 45, the effective date of the Tenant's notice is July 31, 2019. I therefore find the Landlords are entitled to the **\$675.00** claimed for the balance of the July 2019 rent.

I will now address the Landlords' claim for compensation for cleaning and repair of the rental unit.

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 Tenant conceded that she did not have the carpets cleaned and that the Landlords were entitled to monetary compensation for the cost of carpet cleaning; I therefore award the Landlords the **\$121.00** claimed.

Based on the photos submitted by the Landlords I am satisfied the Tenant did not clean the rental unit as required by the *Act*. The Tenant testified that she “did the best she could” while she was on crutches. While she may have had difficulty cleaning the rental unit, she is required, by section 37 to ensure it is left reasonably clean and undamaged. Although not exhaustive I observed the following in the photos: the kitchen sink and dishwasher needed wiping; there appeared to be no effort to clean the inside of the oven the inside of the washer and dryer, or the window sills; and the outside areas were left in an unacceptable condition. I accept the Landlord’s testimony that she paid a third party \$395.00 to clean the rental unit; whether this third party has a valid business license or not, is not relevant to my findings. I find the amounts claimed by the Landlords, **\$395.00**, to be reasonable based on the photos submitted by the Landlords and I therefore award them recovery of this amount. I also award the Landlords the **\$22.86** for the oven cleaner and gloves based on the condition of the interior of the oven as depicted in the photos.

The Landlords claimed the cost of replacing the laminate flooring. They alleged the Tenant damaged the flooring during her tenancy, possibly during her move out. The Tenant alleged the floors were damaged during the kitchen renovation. The Landlord stated that the only materials which were brought into the rental unit were drywall and doors; she also claimed the floors were covered during the renovation.

The photos submitted by the Tenant show the extensive nature of the kitchen renovation. The kitchen is “gutted” to use the colloquial. In these photos the laminate flooring is clearly visible and not covered as claimed by the Landlord. It is notable as well that the cabinetry and countertops were also replaced; presumably those items were also brought into the rental unit, as well as tools and other items related to the renovation.

The evidence confirms that the bathroom and kitchen were renovated during the tenancy. In all the circumstances I find it more likely the flooring was damaged during the extensive kitchen renovation, rather than when the Tenant moved out. On balance, I am not satisfied the Tenant damaged the bathroom floor, as I find it likely the damage occurred due to an improperly hung door, or during the bathroom renovation rather than by the Tenant or her movers. I therefore decline the Landlords' request for the cost to replace the flooring.

As discussed during the hearing, administrative costs for postage and photos are not recoverable under the *Residential Tenancy Act*. I therefore decline the Landlords' request for related compensation.

I accept the Landlord's evidence that the light bulbs and batteries required replacement at the end of the tenancy. *Residential Tenancy Branch Policy Guideline 1-Landlord & Tenant – Responsibility for Residential Premises* provides that a tenant is responsible for replacing light bulbs; I therefore award the Landlords the amounts claimed for light bulbs and batteries.

I accept the Landlord's evidence that the heat register was damaged at the end of the tenancy. The Tenant stated that she did not know how the register was damaged. On balance, I find that the register was damaged during the tenancy and I award the Landlords related compensation.

In terms of the blinds the Landlord stated that the Tenant agreed that two of the blinds were damaged by her dogs. This was not disputed by the Tenant when she testified. I therefore award the Landlords the related compensation.

The Landlord testified that the keys were left sitting on the countertop. She stated that the keys did not work, and they had to get a re-key on the keyless entry. She claimed the cost of the locksmith to deal with this issue. The Tenant testified that she did not use the keys as she used the keyless entry, which worked when she moved out. I am unable, based on the testimony of the parties, to find that the keys no longer worked due to the Tenant's actions or inaction. I therefore dismiss the Landlords' claim for related compensation.

I am satisfied, based on the photos submitted by the Landlords, and her testimony, that they spent considerable time cleaning the yard, repairing holes in the walls and removing and replacing the blinds; I find the \$105.00 claimed by the Landlords reasonable and I therefore award them compensation for this amount.

In total I find the Landlords are entitled to the sum of **\$1,669.53** for the following:

Balance of rent for July 2019	\$675.00
Carpet cleaning	\$121.00
General cleaning and repairs to the walls	\$395.00
Oven cleaner and gloves	\$22.36

Halogen light bulb and smoke detector battery replacement	\$31.08
Batteries for the TV remote and keyless entry	\$17.91
Front entry light bulb replacement	\$7.04
Replacement of front door heat register	\$8.39
Replacement of blinds	\$29.03
Rekeying of locks	\$157.72
Labour costs	\$105.00
Filing fee	\$100.00
TOTAL AWARDED TO LANDLORDS	\$1,669.53

I will now address the Tenant's monetary claim.

As previously noted, I find the Landlords undertook an extensive renovation to the kitchen during the tenancy. I accept the Tenant's testimony that she moved out of the rental unit for approximately a month (from the end of April until the end of May) as she did not have a functioning kitchen. While it was generous of the Landlord to allow the Tenant to stay with them for a few days, I accept the Tenant's evidence that this was an awkward and unworkable arrangement. I also accept the Tenant's testimony that the kitchen counters were not replaced until June 18, 2019.

The Landlord submitted that Tenant could have lived there during the renovation as the unit still had running water and power. While this may be the case, the fact remains the Tenant did not have a functioning kitchen for approximately six weeks until the counters were installed. I find the tenancy was significantly devalued during this time. I accept the Tenant's evidence that she did not reside in the unit for approximately a month and had limited use of the kitchen for a further two weeks. I therefore award her compensation equivalent to five weeks rent calculated as follows:

Monthly rent \$1,350.00 X 12 months = \$16,200.00 annually
 \$16,200.00 / 52 weeks = \$311.54 weekly
 \$311.54 (weekly rate) X 5 = **\$1,557.69**

The Tenant's claim for photo printing is denied as such costs are not recoverable.

The evidence confirms that neither party followed the requirements of the *Residential Tenancy Act* and *Regulations* in terms of the move out inspection. I am unable to find the Landlords proposed an initial date on a piece of paper given to the Tenant. The Tenant denies receiving this paper and I am not persuaded by the evidence that I should accept the Landlords' version. The final notice also did not provide a specific time and date. The Tenant did not propose a date for an inspection and appears to have been unaware of her responsibility to attend an inspection in any case. I therefore decline to make a finding as to who extinguished their right to claim the deposit first.

As the parties have enjoyed divided success, I find they should each bear the cost of their own filing fee.

The \$1,669.53 awarded to the Landlords and the \$1,557.69 awarded to the Tenant are to be offset against the other such that the Landlords are entitled to the balance of \$111.84. The Landlords may retain this from the Tenant's \$675.00 security deposit and must return the balance of **\$563.16** to the Tenant.

Conclusion

The parties have enjoyed divided success. The Landlords are entitled to \$1,669.53 and the Tenant is entitled to \$1,557.69. The Landlords may retain the difference, \$111.84 from the Tenant's \$675.00 deposit and must the balance of **\$563.16** to the Tenant.

In furtherance of this my Decision the Tenant is awarded a Monetary Order in the amount of **\$563.16**. this Order must be served on the Landlords 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: January 10, 2020

Residential Tenancy Branch