



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 dealt with the landlord's application for compensation for cleaning and damage to the rental property; and, authorization to retain the tenant's security deposit and pet damage deposit. The landlords and one of the named tenants appeared for the hearing.

Since the other named tenant did not appear, I explored service of hearing documents upon the other tenant. The landlords testified that they received a forwarding address from the male tenant when they conducted the move-out inspection with him at the end of the tenancy but that they did not receive a forwarding address from the female tenant.

The male tenant, who was in attendance at the hearing, testified that the other tenant is his spouse, or former spouse, and they broke up during the tenancy and she did not move with him to his new address. The tenant stated that he picked up the registered mail package addressed to his former spouse and he sent it to her regular mail.

I was not satisfied that the registered mail sent to the female tenant by the landlord was sent to her address of residence or her forwarding address. Therefore, I was not satisfied she was duly served with notification of the claims against her and I excluded her as a named party to this dispute.

As for service upon the tenant appearing before me, the tenant confirmed that he received a registered mail package from the landlord sent on September 26, 2019 and that it included 7 photographs, which he described, plus an "estimate" for repairs to the siding and door frames and a cleaning invoice. The tenant confirmed that he also had an image of the condition inspection report. I noted that the I had been provided 13

photographs of the property by the landlords and, in addition to the estimate and the cleaning invoice, I was provided an image of a receipt for supplies purchased at a home improvement store. The tenant testified that he was not provided the receipt for purchases at a home improvement store. The landlords indicated they had many photographs on their cell phones, plus video of the property; however, they uncertain as to which photographs had been submitted to me. I did not receive any video evidence from the landlord. I also noted that they had only recently submitted the “estimate” for my review and the landlord explained she was not certain whether she had uploaded it the Residential Tenancy Branch earlier.

Rule 3.7 of the Rules of Procedure requires an party to serve the other party and the Residential Tenancy Branch with clear, organized and identical evidence packages. Rule 3.7 provides as follows:

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible. To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: “Living room photo 1 and Living room photo 2”.

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

[My emphasis underlined]

These requirements are in keeping with the principles of natural justice and developed to ensure a fair proceeding. Having heard from both parties and comparing the evidence they had to that which I was provided, it became clear that the landlord had failed to prepare an identical evidence package for the tenant and for the Residential Tenancy Branch, or make a copy for their records. Since every respondent has a right to be served with the claims against them, and the evidence the other party relies upon

in making their claim, I only admitted the landlord's evidence that was served upon the tenant and I excluded the remainder from further consideration.

The landlord filed this Application for Dispute Resolution seeking compensation of \$1,300.00 and authorization to retain or make deductions from the tenant's deposits. The landlord did not prepare a detailed calculation or Monetary Order worksheet to demonstrate how the claim of \$1,300.00 was calculated; however, it was unopposed that \$1,300.00 is the sum of the tenant's deposits and the landlord clarified that the landlord seeks to retain this sum in satisfaction of his losses, even though his losses exceed \$1,300.00.

In the absence of a detailed calculation or a Monetary Order worksheet, and considering there were only two documents that pertained to the amount of the landlord's losses that were admitted into evidence (the "estimate" and the cleaning invoice), I proceeded to consider the landlord's claim for the sum of these two documents which is \$1,160.00 (\$760.00 + \$400.00).

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenant for cleaning and damage to the residential property, and if so, what amount?
2. Is the landlord authorized to make deductions from the tenant's security deposit and pet damage deposit?

Background and Evidence

The parties executed a written tenancy agreement on October 21, 2018 for a month to month tenancy set to commence on November 1, 2018. The landlord collected a security deposit of \$650.00 and a pet damage deposit of \$650.00. The tenancy ended on August 31, 2019.

Both parties provided consistent statements that the parties inspected the rental unit at the start of the tenancy, or at least the interior of the house, but that a move-in inspection report was not presented to the tenant. The female landlord testified that she did fill in a move-in inspection report after they inspected the house together, while the tenant was standing beside her, but she acknowledged she did not present it to the tenant for his signature. The tenant stated the landlord did not fill in the move-in inspection report while he was there, and it was not presented to him.

The parties were in agreement that they participated in a move-out inspection together and a move-out inspection report was prepared. The tenant signed the move-out inspection report indicating he agreed with the landlord's assessment of the property. The tenant did not authorize the landlord to retain any part of his security deposit or pet damage deposit and he provided a forwarding address. The landlord filed this Application for Dispute Resolution seeking authorization to retain the tenant's deposits on September 13, 2019.

Below, I have summarized the landlord's claims and the tenant's responses.

1. Damage to door frames, weather-stripping and siding -- \$760.00

The landlord submitted that the tenant's dog(s) caused damage to two exterior entry doors frames and/or weather-stripping, and the siding near the front door and the kitchen door. The landlord submitted that the tenant also caused a hole in the vinyl siding on the left side of the house where he used to chop wood. The landlord obtained an estimate totalling \$760.00 to repair the damage although they have yet to make the repairs because they cannot afford to do so.

The "estimate" of \$760.00 is broken down as follows:

1	Front door weather stripping	65.
2	Front door Jam/Frame	45.
3	Kitchen Frame/Weather Strip	100.
4	Entrance Vinyl siding	135
5	Entrance Vinyl corner strip	125
6	Vinyl Siding L/S of house	150
7		
8	Labour @ 5 hours	150
9		
10		
TPS/GST		760 —

The tenant agreed that his dogs caused some of the damage the landlord claimed and took responsibility to pay for line items: 1, 2, 4 and 5 above, plus a portion of labour.

The tenant denied that there was damage to the kitchen door frame and disputed the \$100.00 charge on line 3 of the estimate. As for line 6 of the estimate, the tenant acknowledged that the vinyl siding was damaged on the left side of the house but claims it was due to wind damage and not from him chopping wood. The tenant stated that there were other areas of damage to the siding caused by the storm that were not included in the landlord's photographs. The tenant submitted that the pieces of siding above the hole were caused by the landlord.

The landlord's tried pointing me to a photograph of the kitchen door frame to support their position that the kitchen door frame was damaged; however, such a photograph was not provided to me by the landlord.

The landlord acknowledged responsibility for the misaligned pieces of siding above the hole in the siding on the left side of the house but explained that the repair of those pieces is much easier and less costly than the hole caused by the tenant since it is several rows from the top and requires several pieces to be removed and reinstalled.

2. Cleaning - \$400.00

The landlord submitted an invoice from a cleaner in the amount of \$400.00. The landlord submitted that the tenant left the house very dirty, including dog feces and vomit, and a fridge with a significant amount of food debris. Also, the ceiling of the kitchen and the bedroom had a significant amount of smoke residue that the landlord attributes to the tenants smoking in the rental unit.

The tenant was agreeable to paying for some of the cleaning, such as the fridge. The tenant denied that there was dog feces or vomit because he cleaned that up. The tenant stated he did not have the photographs of the feces that the landlord pointed to and the photograph of the dining room actually depicted a water stain from a leak, not vomit.

The tenant denied smoking in the rental unit, explaining his son is very allergic. Rather, the tenants smoked outside. The tenant attributed the smoke residue on the kitchen ceiling to the wood stove installed during the tenancy.

The landlords submitted the wood stove was new and professionally installed in the living room during the tenancy, at the tenant's request. The landlords stated that cigarette smoke is very distinct from wood smoke and it is their position it is cigarette

smoke residue. The landlord also stated that smoke from the wood burning fire would go up the chimney and not inside the house.

Condition Inspection Report

Part Z. of page 3 of the move-out inspection report, provided as evidence by the landlord, depicts the following (tenant's name omitted for privacy in this decision):

END OF TENANCY

Z. Damage to rental unit or residential property for which the tenant is responsible:

Change of locks
Siding on left side of house damaged, siding at front door, front door ~~damaged~~ ^{destroyed} ~~scratched up~~ ^{by animal},
wall in living room has drywall damage, Dining room wall damaged by sticks, dry wall in laundry room pushed in & soaked, cleaning of walls due to animals, clean food residue in kitchen cupboards, kitchen door weather stripping

1. I, (Tenant's name)

☒ agree that this report fairly represents the condition of the rental unit

☐ do not agree that this report fairly represents the condition of the rental unit for the following reasons:

Analysis

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant, or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Section 37 of the Act also requires a tenant to leave a rental unit “reasonably clean” at the end of the tenancy.

The tenant took some responsibility for some of the damage and cleaning claimed by the landlord but not everything.

In determining the condition of the rental unit at the end of the tenancy, I have heavily relied upon the move-out inspection report. Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition of the rental unit in a dispute resolution

proceeding unless there is preponderance of evidence to the contrary. The move-out inspection report before me appears to conform to the requirements of the regulations and it is duly completed and signed by both parties.

1. Damage to doors and siding -- \$760.00

The tenant denied responsibility for damage, or alleged damage, to the kitchen door frame and to the siding on the left side of the house. When I look at the move-out inspection report, part Z. provides for damage for which the tenant is responsible. The landlord wrote that there was damage to the kitchen door weather-stripping and damage to the siding on the left side of the house. The tenant indicated he agreed with the landlord's assessment. Therefore, I find I am satisfied the tenant is responsible for damage to the kitchen door weather-stripping and siding on the left side of the house.

The tenant took responsibility for the balance of the items identified on the "estimate".

In light of the above, I award the landlord the full amount of the estimate, or \$760.00.

2. Cleaning -- \$400.00

The tenant took some responsibility for cleaning of the rental unit but denied responsibility for all of the cleaning.

The move-out inspection report indicates a number of areas required additional cleaning, including walls in the bedrooms, and a number of areas in the kitchen including the fridge and the cupboards and counters.

The cleaning invoice indicates there was also feces on the door and wall of the bathroom that had to be cleaned and I accept that this was likely missed in conducting the move-out inspection especially if the door was not opened and closed to inspect the other side of it.

The cleaning invoice also describes an excessive smoke residue in the rental unit. The move-out inspection report does not make mention of smoke smell or residue; however, when I view the photograph of the kitchen ceiling and the cleaner's invoice, I accept that there was an excessive smoke residue in the rental unit. It appears that the excessive residue became very apparent when a spot on the ceiling was wiped, revealing a clean area surrounded by a much larger area of dark residue.

The landlord alleged that it was cigarette smoke; whereas, the tenant attributed it to smoke from the woodstove that he used almost non-stop during the tenancy. I note the cleaner did not differentiate between cigarette smoke or wood burning smoke. When I view the photograph of the kitchen ceiling, I find it likely that it is smoke from the wood stove given its almost black color as opposed to a yellow staining that is more typical of cigarette smoke. Therefore, I accept the tenant's position that the smoke residue is from the wood burning woodstove.

The question becomes, is the tenant responsible for cleaning of smoke from the wood stove? The landlord was of the position that no smoke should escape into the house from the wood stove; however, I find that position unrealistic since some smoke will probably enter the room when the fire is started and when opening the woodstove door to add more wood to the fire. However, I am of the view that the tenant is obligated to take care so that excessive smoke does not enter the inside of the rental unit and the tenant may be held responsible for cleaning excessive smoke residue that is the result of not taking due care and attention.

This tenancy was only 10 months in duration and the wood stove was installed during the tenancy and given the short amount of time the wood stove was in use I find the large area of dark smoke residue on the ceiling to be dramatic and indicative of excessive. I find that much smoke residue is likely the result of the tenant not exercising sufficient care and attention to minimize the amount of smoke escaping into the room. Therefore, I hold the tenant responsible for cleaning of the excessive smoke residue as requested by the landlord.

In light of the above, I grant the landlord's request to recover the entire \$400.00 cleaning bill from the tenant.

3. Filing fee

The landlord's claim had merit and I award the landlord recovery of the filing fee paid for this application, which was \$100.00.

4. Security deposit and pet damage deposit and Monetary Order

I authorize the landlord to deduct the sum of \$1,260.00 [\$760.00 + \$400.00 + \$100.00] from the tenant's security deposit and pet damage deposit. Since the landlord is

holding a total of \$1,300.00 in deposits, I order the landlord to return the balance of \$40.00 to the tenant.

In keeping with Residential Tenancy Branch Policy Guideline 17, I provide the tenant with a Monetary Order in the amount of \$40.00 to serve and enforce upon the landlord.

Conclusion

The landlord is authorized to deduct \$1,260.00 from the tenant's deposits and the landlord is required to return the balance of \$40.00 to the tenant. Provided to the tenant with this decision is a Monetary Order in the amount of \$40.00 to serve and enforce upon the landlord.

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 22, 2020

Residential Tenancy Branch