



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S, MNRL-S
 FFT, MNSD

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution, filed on September 30, 2019, the Landlords sought monetary compensation in the amount of \$2,460.67 for unpaid rent, cleaning and repair of the rental unit, authority to retain the Tenants' security deposit, and recovery of the filing fee. In the Tenants' Application for Dispute Resolution, filed on December 4, 2019, they sought monetary compensation in the amount of \$1,300.00 representing return of double their security deposit and recovery of the filing fee.

The hearing of the parties' applications was scheduled for teleconference at 1:30 p.m. on January 27, 2020. 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 Tenants were also assisted by legal counsel.

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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and 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 Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlords?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee paid for their Application?

Background and Evidence

In support of their claim the Landlord, B.B, testified as follows. He stated that the tenancy began April 2015. The Tenants paid a security deposit of \$650.00. At the time the tenancy ended rent was payable in the amount of \$1,441.96 per month, payable on the 1st of the month.

The tenancy ended on September 15, 2019. B.B. stated that on August 17, 2019 the Tenants communicated that they would be moving out on September 15, 2019.

The Landlords filed a Monetary Orders Worksheet in which the following was claimed:

| | |
|--|-------------------|
| Unpaid rent for September 15-30 | \$739.00 |
| Replacement faucet | \$111.98 |
| Labour to install faucet | \$110.00 |
| Cleaning products | \$9.43 |
| Cleaning products | \$8.33 |
| Cleaning products | \$5.99 |
| Photos | \$16.60 |
| Microwave plate replacement | \$39.20 |
| Replace window and screen | \$250.00 |
| Time spent cleaning (24 hours at \$50.00/hr) | \$1,350.00 |
| TOTAL CLAIMED | \$2,640.67 |

B.B. testified that when the tenancy ended, he discovered that the kitchen faucet was leaking and as a result they hired a plumber to replace the faucet.

The Landlords also claimed cleaning costs. B.B. testified that they spent 27 hours over three days cleaning the rental unit after the tenancy ended. He confirmed they requested \$50.00 per hours as that was the amount their cleaners charged them to clean the Landlords' home. He testified that there was grease on the cooker, inside the cooker, and underneath the cabinets. In support of their claim the Landlords submitted photos of the rental unit

The Landlord stated that the microwave plate was missing at the end of the tenancy. He noted that these plates are microwave unit specific and when the tenancy ended the plate was clearly not the original pate as it did not fit. The Landlord also testified that the microwave was brand new when the Tenants moved in.

The Landlord also claimed the cost of \$250.00 to replace the screen in the living room and on the bottom of the French door.

The Landlord stated that they received the Tenants' forwarding address, however, the address was incorrect as all the documents they sent to the Tenants were returned. He stated that on October 5, 2019 he emailed the Tenant to inform them that all documents had been returned; at this time the Tenant gave the correct address after which all their documents were received.

In response to the Landlords' submissions the Tenant, M.L., testified as follows. She confirmed they moved in April 2015. She stated that at the end of the tenancy they were paying \$1,478.01 per month in rent.

M.L. confirmed that she told the Landlord that they were moving from the rental unit on August 15, 2019, with an intended effective date September 15, 2019.

M.L. that they also cleaned the rental unit and claimed to have spent two days cleaning as well. She also stated that her husband and her 20-year-old daughter took photos of the rental unit confirming its condition when they moved out. She further stated that she did not see the grease when they moved out.

M.L. stated that she gave the Landlord their forwarding address to the Landlord. She stated that she first gave the Landlord the address verbally. She said she never gave the Landlord the wrong address.

In terms of the faucet, M.L., stated that it was not leaking during the tenancy and worked fine.

M.L. stated that there was no screen on the living room window when she moved in. She also stated that when they moved in there was already damage to the screen on the door.

In terms of the microwave plate, M.L., stated that it was the same microwave plate that was in the microwave when they moved in and they did not replace it.

M.L. stated that the Landlord did not give her a copy of the move in inspection report in 2015 when the inspection occurred.

Counsel submitted that the Tenants first gave their forwarding address to the Landlords in writing on September 15, 2019 by email. That email was not provided to me.

In reply to the Tenant's testimony regarding the window screen, the Landlord stated that "everything was there when the tenancy began".

The Landlord stated that the Tenants were only in attendance at the evening inspection. He said that when the Tenants' husband began videotaping him, he then "threw the Tenants' husband out" and didn't want to see them again.

The Landlord stated that the Tenants participated in the move in inspection on March 28, 2015 and gave the Tenants a copy of the move in inspection report on April 1, 2015 by email.

In closing, counsel for the Tenants submitted as follows.

After the parties conducted the initial condition inspection the Tenants were not provided a copy of the inspection as required by the *Regulations*. Counsel submitted that the Landlords have therefore extinguished their right to claim against the deposit.

Counsel also submitted that the rental unit is 940 square feet; as such, to spend 27 hours cleaning is egregious.

In terms of the microwave plate, counsel submitted that the receipt submitted by the Landlords noted the “service address” as the Landlord’s personal address such that they submit that the replacement plate went to the Landlord’s home, not the rental unit.

In terms of the screens, the Landlords failed to provide receipts to support this claim.

Counsel also noted there was no receipt for the cleaning, the number of hours spent was unreasonable, and the \$50.00 hourly rate was not reasonable.

Counsel also submitted that the photos taken by the Tenants confirm the condition of the rental unit as being left in a reasonable condition.

In terms of the faucet, the Tenants submitted a video which showed that the faucet was intact. The Tenants did not anticipate the Landlord would say it was leaking as they did not have an issue with the faucet during 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 Landlords bear the burden of proving their claim on 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 September 15-30, 2019. I accept the Tenants' evidence that at the end of the tenancy they were paying \$1,478.01 per month in rent; notably this figure coincides with the amounts claimed by the Landlords for half a months' rent $\$1,478.01 / 2 = \739.00 .

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.

The Landlord testified that the Tenants gave notice to end their tenancy on August 17, 2019; the Tenants submit they gave their notice on August 15, 2019. It is unnecessary that I reconcile this discrepancy, as in any event, the effective date of the Notice, pursuant to section 45 of the *Act*, is September 30, 2019. I therefore find the Tenants are responsible for the balance of the September 2019 rent as claimed by the Landlords.

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 Landlords claim the cost to replace the kitchen faucet as they submit it was leaking at the end of the tenancy. The Tenants claim the faucet was working fine when they moved out.

I was not provided any evidence as to the age of the kitchen faucet. *Residential Tenancy Branch Policy Guideline 40 Useful Life of Building Elements* provides that faucets have a 15-year useful life. Unfortunately, items such as faucets are not designed to last indefinitely, and I find it possible the faucet started leaking due to age.

In all the circumstances, I find the Landlords have failed to submit sufficient evidence to support a finding that the Tenants damaged the faucet. Accordingly, the Landlord's claim for related compensation is dismissed.

The Landlords also claim the sum of \$1,350.00 for cleaning of the rental unit in addition to the cost of cleaning supplies. While I accept the Tenant's testimony that they cleaned the rental unit, I am satisfied, based on the photos submitted by the Landlords that the rental unit required further cleaning at the end of the tenancy. I am particularly persuaded by the photos of the stove and oven which showed considerable grease. That said, I agree with counsel for the Tenant that 27 hours of cleaning seems excessive for the size of the rental unit. I also find the \$50.00 per hour claimed to be unreasonable. Based on the photos submitted I find that an additional eight hours of cleaning at \$30.00 per hour is reasonable. I therefore award the Landlord the nominal sum of **\$240.00** for cleaning. I accept the Landlords' evidence that they incurred the cost of **\$23.75** for cleaning products and I award them recovery of this sum.

The Landlords' claim for the cost of photo development is dismissed as such claims are not recoverable under the *Residential Tenancy Act*.

I am unable, based on the evidence before me, to find that the Tenants damaged the window screen or exchanged the microwave plate. The Landlords claim these items were damaged by the Tenants and the Tenants deny doing so. While it is often the case that testimony of the parties will conflict, without corroborating evidence supporting one parties' version of events, I am unable to prefer the testimony of either; consequently, I find the Landlords have failed to prove their claim in this regard.

The Tenants seek return of double their security deposit. The Tenant testified that the Landlords did not provide them with a copy of the move in condition inspection to the Tenants. This was not disputed by the Landlords.

Section 24(2)(c) of the *Act* provides that in such circumstances a Landlord extinguishes their right to claim against the deposit and reads as follows:

for tenant and landlord if report requirements not met

24 (2)The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

...

(c)does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I therefore find that the Landlords had no option at the end of the tenancy but to return the Tenants' deposits to them. As they failed to do so, I find the Tenants are entitled to return of double the deposit paid, pursuant to section 38 of the *Act* in the amount of **\$1,300.00.**

The Landlords are reminded that Tenants are permitted to take photos and video of the rental unit during the inspections.

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

Conclusion

The Landlords are entitled to monetary compensation in the amount of \$1,002.75 for the following:

| | |
|---|-------------------|
| Unpaid rent for September 15-30 | \$739.00 |
| Cleaning products | \$23.75 |
| Time spent cleaning (8 hours at \$30.00/hr) | \$240.00 |
| TOTAL AWARDED | \$1,002.75 |

The Tenants are entitled to return of double the deposit paid and are granted compensation in the amount of **\$1,300.00.**

The amounts awarded to the parties are offset against the other such that the Tenants are entitled to the difference: **\$297.25**. Pursuant to section 67 of the *Act*, I grant the Tenants a Monetary Order in the amount of **\$297.25**. 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: February 10, 2020

Residential Tenancy Branch