



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution in which the Landlord requested monetary compensation from the Tenant, authority to retain her security deposit, and to recover the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on February 7, 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 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. Is the Landlord entitled to monetary compensation from the Tenant?

2. Should the Landlord be entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began November 1, 2015. The Tenant paid a security deposit of \$700.00.

The Landlord testified that the tenancy ended September 30, 2019.

The Landlord stated that she performed a move in and move out condition inspection. Both parties prepared their own condition inspection reports, copies of which were provided in evidence. These reports provide each party's personal view as to the condition of the rental unit at the time the inspections occurred.

The Landlord sought \$700.00 from the Tenant including:

- \$73.26 for unpaid hydro and water utilities (the Landlord confirmed that she initially sought the sum of \$120.00 as that was her estimate at the end of the tenancy).
- \$120.00 for exterior cleaning and \$105.00 for interior cleaning. The Landlord provided copies of the invoices rendered for those amounts.
- painting in the amount of \$420.00.

The Landlord confirmed that at the time the tenancy ended the paint was 4 years. The Landlord claimed the cost to paint the baseboards and the trim as she claimed the Tenant painted the trim without the Landlord's consent.

The Landlord also called L.S. as a witness. She confirmed that she was the one who took the photos of the rental unit when the tenancy ended on September 30, 2019 and October 1, 2019. L.S. also stated that she also did exterior cleaning of the rental unit and billed the Landlord \$120.00 for four hours of work, noting that it actually took her six hours.

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

The Tenant stated that she was opposed to paying the utilities. She stated that she paid up all of her bills in full at the time the tenancy ended as she contacted the utility companies and asked for readings to the date she moved out. She further noted that the last reading for B.C. Hydro was on September 15, 2019 and as she moved out on September 6, 2019 any amounts after that date were not a result of her use.

In terms of the Landlord's claim for cleaning, the Tenant stated that she cleaned the rental unit to "pristine condition". She stated that she also took photos of everything at the time and provided copies in evidence. She noted that there was a bit of dust and coffee grounds in a cupboard, but the rental unit was cleaned to a reasonable standard.

The Tenant stated that she didn't see a problem with how she left the outside. She stated that the Landlord never power-washed during the tenancy and questioned why the Landlord felt the need to do so when she left. In response to the Landlord's claim for the cost of compost removal the Tenant stated that the compost was there a year before when she moved in and was $\frac{3}{4}$ full at that time. She claimed that she only added yard clippings from the yard. She also stated that she used the kitchen scrap removal service for the city.

The Tenant also stated the Landlord gave her permission to paint the rental unit on the condition that the paint was to be light in colour, it was to have been done by a professional, and to Landlord had to approve of it. The Tenant stated that she followed all the Landlord's directions and had it painted in 2015. The Tenant also stated that she left the Landlord a full gallon of white paint, and a full gallon of the bedroom paint, which she accepted and used.

In reply the Landlord stated that the Tenant brought the compost bin onto the property in the spring of 2016. She also noted that at the end of the tenancy there were dog poop bags in it, Christmas walnuts and the entire thing was like cement.

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.

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.

After consideration of the testimony, evidence and submissions of the parties, I find as follows.

The Landlord seeks monetary compensation for the cost of utilities outstanding as of September 30, 2019. The Tenant submits that she paid her utilities in full as of the day she moved out on September 6, 2019.

The Landlord provided evidence of the utility bills for the electricity and water utility. The amount outstanding for the electrical utility from September 16, 2019 to October 1, 2019 was \$33.11 including taxes. The amount outstanding for the time period September 2, 2019 to October 31, 2019 was \$80.30; the Landlord simply divided this figure in half to arrive at the amount owing for September in the amount of \$40.15.

The evidence confirms the Landlord moved back into the rental unit when the tenancy ended. As the Tenant vacated the rental unit on September 6, 2019, any amounts for utilities used after that date were not used by the Tenant. The Tenant confirmed that she obtained utility statements to that date and paid those accounts in full, such that she paid for her usage.

Although the tenancy may have legally ended at a later time, I find the Tenant vacated the rental unit on September 6, 2019. Electrical and water utilities are charged by usage and not a flat fee; as such, any amounts used after September 6, 2019, are not the responsibility of the Tenant. I am satisfied, based on the evidence submitted by the Tenant, that she paid for all utilities incurred by her during her occupation of the rental unit; I therefore dismiss the Landlord's claim for compensation for utilities.

I will now address the Landlord's claim for cleaning costs. I have thoroughly reviewed the photos submitted by both parties. The Landlord's photos show some minor dust in the light fixtures, window sills and in some corners of the rental unit and indicated the stainless steel and cabinetry required some light wiping. In general, and while some light cleaning may have been required, I find the rental unit was left reasonably clean by the Tenant; on this basis I award the Landlord the nominal sum of \$30.00 for minor interior cleaning.

The Landlord also seeks monetary compensation for the amounts paid to clean the exterior of the property including pressure washing the deck and removing the compost.

The photos of the exterior of the property indicate some cleaning of the exterior of the property would have been required.

The tenancy agreement between the parties required the Tenant to care for the yard; I find this included dealing with the compost. The Tenant claimed that she used the outside compost for garden waste only. Whether the Tenant brought the compost to the rental unit or not, it is clear it was not regularly turned and therefore compacted rendering it not useful for soil amendment. I accept the Landlord's evidence that the contents were simply disposed of. I find the Landlord is entitled to related compensation.

The Landlord also sought compensation for pressure washing the deck. *Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant—Responsibility for Residential Premises* provides that tenants are responsible for routine maintenance in a single-family dwelling. I find this to include mowing lawns, raking leaves, weeding, and snow removal. Conversely, I find that pressure washing, gutter clearing, and fence maintenance are not routine maintenance and are the responsibility of the Landlord.

I was not provided with a breakdown of time for the pressure washing; I therefore discount the Landlord's claim by \$30.00 for the nominal cost to pressure wash the deck. I find the balance of the amounts claimed for exterior cleaning to be recoverable and therefore award the Landlord the sum of **\$90.00**.

The Landlord also seeks monetary compensation for the cost to paint the trim and baseboards.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item I refer to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements*.

The Landlord confirmed the rental unit was painted shortly before the tenancy began in 2015. As such, when the tenancy ended, the paint was four years old. *Policy Guideline 40* provides that interior paint has a useful life of four years. As such, I find that the rental unit would have likely required painting in any event and I therefore dismiss the Landlord's claim for the cost of painting the trim.

As the Landlord has enjoyed limited success, I decline her request for recovery of the filing fee.

Conclusion

The Landlord's monetary claim is granted in part. I award the Landlord compensation in the amount of **\$120.00** for the following:

Interior cleaning	\$30.00
Exterior cleaning	\$90.00
TOTAL AWARDED	\$120.00

I authorize the Landlord, pursuant to section 72 of the *Act* to retain \$120.00 of the Tenant's security deposit towards the amounts awarded.

The Tenant is therefore entitled to balance of her security deposit in the amount of **\$580.00**. In furtherance of this, I grant the Tenant a Monetary Order for **\$580.00**. This Order must be served on the Landlord 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 12, 2020

Residential Tenancy Branch