



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for alleged damage caused by the tenant; and
- recovery of the filing fee paid for this application.

The landlord, the landlord's agent, the tenant and his spouse attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenant confirmed receiving the landlord's evidence and that he had not filed any evidence, instead choosing to respond at the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord's monetary claim listed in their application made on October 18, 2019, was \$2,050.00, comprised of \$1,950.00 for damage to the rental unit and \$100.00 for the filing fee.

On or about February 7, 2020, the landlord submitted a monetary order worksheet, which showed a monetary claim of \$2,664, exclusive of the filing fee of \$100.00.

I informed the landlord's agent, who represented the landlord at the hearing, that the applicant may not increase a monetary claim through evidence. A monetary claim may only increase or change through an amended application. I informed the landlord that he was allowed to designate what claims he wished to proceed on listed on the monetary order worksheet, not to exceed the application amount of \$1,950.00. The landlord's agent chose to eliminate the claim of \$800.00 for painting.

The remaining claims of the landlord will be more fully set out below.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

I heard undisputed evidence that the tenancy began on October 1, 2016 and ended on September 30, 2019. The tenant paid a security deposit of \$950.00, which the landlord has retained, claiming against it in this application.

The allowed monetary claim of the landlord is:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Flooring replacement	\$1,300.00
2. Cleaning	\$334.95
3. Light bulb replacement	\$40.95
4. Paint purchase	\$188.52
TOTAL	\$1,864.42

The landlord submitted that the basis for that claim was that the tenant failed to reasonably and properly clean the rental unit when he vacated and caused damage during the tenancy.

The landlord's agent and landlord's relevant testimony included the following:

Flooring-

The landlord's agent submitted that the flooring was very scratched up when the tenant vacated, and in particular, four sections where the bed posts were appeared to be ground up.

The landlord's agent submitted that the quotes for the flooring was very high, and one quote was \$1,500.00 for the bedroom alone.

The landlord's agent submitted that they received more opinions and ultimately, as they wanted to match the bedroom floor, the living room was replaced as well. The landlord's agent submitted that the whole issue was brought on from the damage to the bedroom floor, which is why they are asking for just over 50% of the total amount.

The landlord's agent said the flooring was laminate.

In response to my inquiry, the landlord's agent did not know the age of the flooring and thinks the replacement may have been an upgrade. Further, the bedroom photo was taken at the move-out inspection.

Cleaning-

The landlord's agent said when the tenant turned over the rental unit, it was not clean. In particular, the unit was dusty and the oven was not cleaned.

The landlord said that the windows and toilet were not cleaned and she reiterated that the oven was not clean.

Light bulbs-

The landlord's agent submitted that there were light bulbs out in the living room, hallway, and main entrance. Due to this, the tenant should be held responsible for the replacement costs.

In response to my inquiry, the landlord's agent was not sure if the bulbs were LED.

Paint costs-

The landlord's agent submitted that there were scuff marks on the living room wall and therefore, they hired someone to come in and paint the walls.

The landlord's agent said the walls were last painted just before the tenant moved in.

The testimony showed that the landlord moved back into the rental unit on October 5, 2019.

The landlord's relevant evidence included the condition inspection report (CIR), photographs of the rental unit, and receipts/invoices.

In response to my inquiry, some of the photos submitted were taken at the move-out inspection and others were taken on a later date.

The tenant's relevant testimony in response-

Flooring-

The tenant submitted that there was only damage to the bedroom floor due to the cheap, laminate flooring. The tenant submitted that it appears the top of the floor was pulled away.

Cleaning-

The tenant said that the landlord's agent asked him if he would vacate prior to October 1, earlier than anticipated; however, he had a cleaner booked for September 30, but the landlord wanted the keys returned earlier. He said he returned the keys on September 29.

The tenant submitted the apartment was just dusty as it always was.

Light bulbs-

The tenant said he was not aware the bulbs had to be replaced. He replaced many bulbs during the tenancy.

Paint costs-

The tenant said the bedroom walls needed touching-up when he moved in and he should not have to pay for the entire costs just because they could not match up the paint.

Analysis

I have reviewed all testimonial, documentary and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision. My findings are based upon a balance of probabilities.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord here, has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

I have reviewed the landlord's photographs and the documentary evidence. When looking at various photographs, in some instances, I was not able to determine for what damage the landlord was claiming.

Many photographs were extremely close-up to the claimed damage or unclean state.

Conversely, the landlord failed to provide up-close photographs of the same area or item from the beginning of the tenancy. I was therefore unable to determine if there was any damage that occurred during the tenancy which was above normal wear and tear.

As to the individual claims, I find the following:

Flooring-

As to the costs of the flooring replacement, I have closely examined the photographs of the landlord, and I cannot determine that the tenant was the cause of the damage to the four spots underneath his bed. In my mind, it appears the flooring was of such poor quality that the spot just rubbed away to some type of particle surface underneath.

The landlord was unable to provide the age of the flooring and therefore, I could not determine if the flooring had been fully depreciated.

Also, the purpose of awarding damages to the claimant is to put that party in the same position as before the alleged damage.

The landlord said the flooring was an upgrade and I therefore find it just as likely as not, that the landlord would be unjustly enriched if I were to award her compensation.

Additionally, I do not find the landlord's claim that the tenant should be held responsible for some of the costs to replace the flooring for the entire unit to be reasonable.

For these reasons, I find the landlord submitted inefficient evidence to support their claim for flooring replacement and I therefore dismiss the landlord's claim for flooring replacement.

Cleaning-

I have reviewed the landlord's CIR and find that some areas of the rental unit have improved during the tenancy, as shown by the side-by-side condition at the start and at the end of the tenancy.

I do not find it reasonable that a tenant who improves some parts of the condition of the rental unit would leave other parts dirty.

I was also influenced by the tenant's testimony that he had booked a cleaner, but was not able to complete the process as the landlord wanted the keys early to be able to start her move-in.

I was further influenced by the lack of photographic evidence by the landlord and upon review of the cleaning invoice, I find the invoice lacked details as to what was cleaned.

I therefore find the landlord submitted insufficient evidence to support their claim for cleaning and it is dismissed.

Light bulbs-

Residential Tenancy Policy Guideline 1 states that a tenant is responsible for replacing light bulbs during the tenancy.

I do not find support in this Policy Guideline for the landlord's claim that the tenant is responsible for replacing light bulbs after the tenancy ends.

I also find that light bulbs going out during a tenancy is a sign of reasonable wear and tear, considering the 3-year length.

I find the landlord submitted insufficient evidence to support their claim for light bulb replacement.

Painting costs-

I find the scuff marks on the walls of the rental unit were not significant enough to be considered damage. I find it just as likely as not that the scuff marks were reasonable wear and tear during a 3-year tenancy.

I therefore dismiss the painting costs claim of the landlord.

For all the above reasons, I dismiss the landlord's application in its entirety.

As I have dismissed the landlord's application, I order the landlord to return the tenant's security deposit of \$950.00, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$950.00, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenant's security deposit of \$950.00, immediately, and the tenant is granted a monetary order in the amount of that deposit in the amount of \$950.00 in the event the landlord does not comply with this order.

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: March 12, 2020

Residential Tenancy Branch