



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 15, 2019, wherein the Landlord sought monetary compensation from the Tenant, authority to retain the Tenant's security deposit, and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on March 5, 2020. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:45 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenant with the Notice of Hearing and the Application on October 25, 2019 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 30, 2019 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord confirmed her email addresses during the hearing as well as her 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 authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began September 1, 2018 and ended August 31, 2019. Monthly rent was \$1,450.00 and the Tenant paid a security deposit of \$1,400.00 and a pet damage deposit of \$700.00. The Landlord confirmed that she returned \$700.00 to the Tenant such that she continues to hold \$1,400.00 in deposits.

The Landlord claimed the Tenant failed to clean and repair the rental unit at the end of the tenancy. The Landlord also claimed the cost to paint the rental unit (\$1,995.00) as the Tenant painted during the tenancy but did not properly tape or trim such that there was paint all over the baseboards and trim. She confirmed that she painted the rental

unit shortly before the tenancy began in September of 2018, such that it was only one year old at the time the tenancy ended.

The Landlord also sought the cleaning costs of \$550.00.

In support of her claim she provided numerous photos of the rental unit as well as estimates for the cost of painting and cleaning the unit. At the hearing before me she confirmed that she incurred the costs as estimated.

The Landlord also claimed the \$175.00 cost of replacing the ceiling fan, which had been damaged by the Tenant. She claimed the fan was likely purchased in 2001 when she first bought the rental home. She also sought the cost of replacing the stove as the Tenant broke the oven glass. The Landlord was not aware of the age of the stove, only to say it was "old". She confirmed she purchased a second-hand stove for \$400.00.

The Landlord also sought the cost to sand, stain and refinish the hardwood floors which she says were damaged by the Tenant's dog. In this respect she sought \$400.00 for the stain and \$500.00 for the rental of the sander she used to refinish the floors herself.

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.

I find the Tenant failed to clean the rental unit as required by the *Act*, such that the Landlord incurred the cost of hiring cleaners. In this respect I am persuaded by the Landlord's testimony, as well as the photos provided by the Landlord. Based on the evidence before me, I find the Landlord is entitled to the **\$550.00** claimed for cleaning. While the \$50.00 per hour rate appears high, I accept the Landlord's testimony that this is the "going rate" for cleaners in the community in which the rental unit is located. I therefore award her the amounts claimed.

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.

A Tenant is required to leave a rental unit undamaged at the end of a tenancy. Reasonable wear and tear is not considered damage. Where a Tenant leaves a rental

unit damaged and does not repair the damage prior to the end of their tenancy the Landlord may seek compensation from the Tenant.

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, where necessary, I have referred to normal useful life of the item as provided in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. Accordingly, I discount the Landlord's claim for replacement of the following building elements as follows.

I am satisfied, based on the photos provided to me, that the rental unit required painting at the end of the tenancy. The Landlord claimed compensation in the amount of \$1,995.00 for painting. She testified that the paint was one year old at the time the tenancy ended. *Policy Guideline 40* provides that interior paint has a useful life of four years. Accordingly, I discount the Landlord's claim of \$1,995.00 by 25% and award her **\$1,496.25** for painting.

The Landlord claimed compensation in the amount of \$175.00 for the replacement cost of the ceiling fan. She testified that the ceiling fan was 18 years old at the time the tenancy ended. *Policy Guideline 40* does not provide a useful life for ceiling fans. Drapes and blinds have a useful life of 10 years according to the *Guideline*, light fixtures have a useful life of 15 years, and most appliances have a useful life of 15 years; accordingly, I find the ceiling fan had likely reached its useful building life at the end of

the tenancy in any case and I therefore decline the Landlord's request for related compensation.

The Landlord claimed compensation in the amount of \$400.00 for the cost to replace the stove. She did not provide a receipt as she purchased the stove with cash from an online seller. She was also not able to provide any information as to the age of the stove, only to say it was "old". As she purchased the property in 2001, the stove was at least 18 years old when the tenancy ended. *Policy Guideline 40* provides that stoves have a useful life of 15 years. Accordingly, I dismiss the Landlord's claim for compensation for the stove as I find it had likely reached its useful building life in any case.

I was not provided with any information as to the age of the hardwood floors or when they were last refinished. I therefore find I have insufficient evidence to find the Landlord is entitled to compensation for the claimed costs related to the flooring, as it is possible the floors would have required refinishing in any event of the tenancy.

As the Landlord has been partially successful in her claim, I award her recovery of the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$2,146.25** for the following:

Cleaning	\$550.00
Painting (discounted by 25%)	\$1,496.25
Filing fee	\$100.00
TOTAL AWARDED	\$2,146.25

Pursuant to section 38 of the *Act* I authorize the Landlord to retain the Tenant's \$1,400.00 security and pet damage deposit towards the amounts awarded. The Landlord is therefore entitled to a Monetary Order for the balance due in the amount of **\$746.25**; this Order must be served on the Tenant 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: March 06, 2020

Residential Tenancy Branch