



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1114747 BC Ltd. c/o Custom Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agreed that the landlord served the tenants with the landlord's application for dispute resolution via registered mail. I find that the tenants were served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Both parties agreed on the address of the subject rental property. The landlord's application for dispute resolution did not include the street suffix. Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to include the street suffix of the subject rental property.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018 and ended on November 7, 2019. Monthly rent in the amount of \$3,150.00 was payable on the first day of each month. A security deposit of \$1,575.00 and a pet damage deposit of \$1,575.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenants provided the landlord with their forwarding address in writing on November 7, 2019.

The landlord applied for dispute resolution on November 22, 2019, 15 days after the tenants moved out of the subject rental property and provided their forwarding address in writing.

Both parties agree that on October 7, 2019 the tenants provided the landlord with notice to end the tenancy. Both parties agree that the tenants did not pay November 2019's rent. The tenants testified that they were willing to pay a per diem rate for the days they occupied the subject rental property, but not for the entire month as they gave one month's notice to end tenancy.

The landlord testified that the tenants were required to give the landlord one clear month's notice to end tenancy, and so their notice to end tenancy was not effective until

November 30, 2019 and the tenants therefore owe the landlord \$3,150.00 in unpaid rent for November 2019.

The tenants testified that the landlord did not ask them to complete a move in condition inspection report when they moved in. The move in condition inspection report entered into evidence by the landlord states: "new condition no report needed". It is signed by the landlord only.

Both parties agreed that the tenants authorized the landlord, via an October 7, 2019 email, to retain their security deposit.

The landlord testified that the following damages arose out of this tenancy:

Item	Amount
Cleaning	\$378.00
Repair damaged walls	\$1,102.50
Clean carpet	\$236.25
Repair bannister	\$708.75
Repair hardwood floor	\$1,155.00
Total	\$3,580.50

Cleaning

The landlord's agent testified that the subject rental property was not cleaned when the tenants moved out and garbage was left at the subject rental property. The landlord's agent testified that it took 12 hours for their maintenance personnel to clean the subject rental property and take out the garbage. The landlord entered into evidence photographs of garbage and a dirty property. The landlord entered into evidence an invoice for 12 hours of work at a rate of \$30.00 per hour plus GST for a total of \$378.00.

The tenants testified that they agreed the subject rental property needed cleaning when they moved out and that they left garbage at the subject rental property, but that it would not have taken 12 hours to clean. The tenants did not upload any documents into evidence to support this claim.

Repair Damaged Walls

The landlord's agent testified that the tenants damaged the walls at the subject rental property which required repair and repainting after the tenants moved out. The landlord's agent testified that the tenants left holes in the walls and left adhesive stickers on the walls which damaged the drywall when they were removed. The landlord entered into evidence photographs of the above described damage. The landlord's agent testified that it took their in-house maintenance staff 30 hours to repair the walls and repaint the subject rental property. The landlord entered into evidence an invoice for the repair of the walls by their maintenance staff in the amount of \$1,102.50. The landlord's agent testified that the subject rental property was last painted just before the tenants moved in.

The tenants did not deny any of the landlord's above testimony, except that the adhesive stickers were on the closet door, and not the drywall. The tenants confirmed that they put the holes in the walls shown in the photographs entered into evidence by the landlord. The tenants disputed the cost to repair the damages they caused. The tenants did not upload any documents into evidence to support their testimony.

Clean Carpets

The landlord's agent testified that the tenants did not clean the carpets at the end of the tenancy. The landlord entered into evidence an in-house invoice in the amount of \$378.00 for carpet cleaning. The tenants agreed that they are responsible for this fee.

Repair bannister

The landlord's agent testified that the tenants damaged the banister and that it cost \$675.00 plus 5% GST (\$708.75) to repair. An invoice for same was entered into evidence. Photographs of damaged banister were entered into evidence. The landlord hypothesized that the tenants' pets are responsible for the damage.

The tenants testified that the bannister was damaged by their mover when they moved out.

Repair hardwood floor

The landlord's agent withdrew the landlord's claim for damage to the hardwood floor.

Analysis

November 2019's rent

Section 45(1) of the *Act* states that 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.

While email does not accord with the service requirements of section 88 of the *Act*, I find that the landlord was sufficiently served, for the purpose of this *Act*, with the tenant's notice to end tenancy on October 7, 2019 in accordance with section 71 of the *Act*.

The effect of section 45(1)(a) and section 45(1)(b) of the *Act*, is that one clear month of notice must be provided to the landlord. The earliest move out date permitted, for a notice to end tenancy given on any day in October 2019, was November 30, 2019. The effective date of the end of the tenancy must be the day before rent is due, which in this case is the last day of the month, so the tenants were not permitted to end their tenancy in the middle of the month.

Residential Tenancy Policy Guideline #5 states that when the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date.

In this case, contrary to section 45 of the *Act*, less than one month's written notice was provided to the landlord to end the tenancy. The earliest date the tenants were permitted to end the tenancy was November 30, 2019. I therefore find that the tenants owe the landlord \$3,150.00 in unpaid rent.

Cleaning

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, and the testimony of the parties, I find that the rental unit required significant cleaning. I find that the invoice for cleaning in the amount of \$378.00 is reasonable in the circumstances. I find that the tenants are responsible for this expense.

Repair Damaged Walls

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the testimony of the parties, I find that the tenants damaged the walls at the subject rental property, contrary to section 37 of the *Act*. The landlord entered into evidence an invoice in the amount of \$1,102.50 for the repair work. I find that this invoice represents a reasonable cost to repair the damages caused to the subject rental property.

Policy Guideline #40 states that the useful life for interior painting is four years (48 months). Therefore, at the time the tenant moved out, there was approximately 32 months of useful life that should have been left for the interior paint of this unit. I find that since the unit required repainting after only approximately 16 months, the tenants are required to pay according to the following calculations:

$\$1,102.50 \text{ (cost of painting/repairing)} / 48 \text{ months (useful life of paint)} = \22.97
(monthly cost)

$\$22.97 \text{ (monthly cost)} * 32 \text{ months (expected useful life of paint after tenants moved out)} = \mathbf{\$735.04}$

Clean Carpets

Section 63 of the *Act* states:

63(1)The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2)If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

During the hearing the tenants agreed to pay the landlord \$378.00 for the cost of the carpet cleaning. Pursuant to that agreement I award the landlord \$378.00.

Repair bannister

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that whether the damage to the banister was caused by the tenants' pet or the mover is not relevant. What is relevant is that the tenants testified that their mover damaged the subject rental property. The tenants are responsible for the actions of all parties they permit on the property. I find that the tenants are responsible for the damage whether it was caused by a pet or a mover. I therefore award the landlord \$708.75 for the banister repair.

Repair hardwood floor

Based on the landlord's agent's testimony, the landlord's claim for the cost of repairing the hardwood floor is dismissed.

Security Deposit

Section 38 of the *Act* states that within 15 days after the later of:

- (a)the date the tenancy ends, and
 - (b)the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security and pet damage deposits in part satisfaction of the monetary claim against the tenants.

As the landlord was successful in its application for dispute resolution, I find that the landlord is entitled to recover its \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
November's rent	\$3,150.00
Cleaning	\$378.00
Repair damaged walls	\$735.04
Clean carpet	\$236.25
Repair bannister	\$708.75
Filing fee	\$100.00
Less security deposit	-\$1,575.00
Less pet damage deposit	-\$1,575.00
Total	\$2,158.04

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 23, 2020

Residential Tenancy Branch