



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1061089 B.C. LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On December 21, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the Act, and seeking to recover the filing fee pursuant to Section 72 of the Act.

Both the Landlord and the Tenant attended hearing. All parties provided a solemn affirmation.

The Landlord advised that he served the Notice of Hearing and evidence package to the Tenant’s office by hand on or around December 23, 2019 and the Tenant confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package.

The Tenant advised that she did not submit any evidence for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?

- Is the Landlord entitled to apply the security deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2012, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on December 12, 2019. Rent was established at \$1,118.00 per month and was due on the first day of each month. A security deposit of \$525.00 was also paid. A copy of the signed tenancy agreement was submitted into evidence.

He advised that his company purchased the property subsequent to the start of the tenancy and he did not believe he was provided with a move-in inspection report from the previous owner. A copy of an unsigned move-in inspection report was submitted as documentary evidence and the Landlord stated that he simply filled this out to indicate that there was no move-in inspection report. The Tenant advised that she “may have signed something” but a move-in inspection report was never conducted.

Both parties agree that a move-out inspection report was conducted on December 13, 2019. A copy of this report was submitted as documentary evidence.

Both parties also agreed that the Tenant provided a forwarding address in writing on the move-out inspection report.

The Landlord submitted that he was seeking compensation in the amount of **\$525.00** because the Tenant did not leave the rental unit in a re-rentable condition. He stated that the carpets were not cleaned, that the blinds were damaged, that there was a missing transition strip, that neither the dishwasher nor the fridge was cleaned, and that there was damage to the walls that required repairing and painting.

He stated that there were holes left in the walls and scuffs on the walls that were beyond reasonable wear and tear. He referenced pictures submitted as documentary evidence and an invoice of a painter to support that it cost him \$400.00 to have these issues corrected. He advised that the walls were last painted in 2009.

He submitted that the Tenant damaged a set of blinds in the rental unit that would cost \$10.00 to repair. These have not been replaced yet as his parents live in the rental unit now. He submitted a picture of the damaged blinds and stated that these blinds were in the rental unit at the start of the tenancy.

He advised that the transition strip repair was conducted by himself and took him approximately 20 minutes to replace. He paid for the adhesive to repair this. He submitted a picture of this to demonstrate the damage.

He stated that he cleaned the rental unit himself with two other family members and it took at least four hours total to return the rental unit to a re-rentable state. He also advised that he rented a carpet cleaner to clean the carpets; however, he is not sure how much this cost him.

Finally, he stated that he was asking for \$100.00 for his anticipated time to replace the blinds and for repairing the transition strip in the rental unit.

The Tenant advised that she was shocked when the Landlord advised her that he would not return her deposit. She stated that at the end of tenancy, she was "very sick" and had not worked so she could not afford a cleaner. She advised that she was in "such a rush" so she had her parents help her clean, and "they did the best they could." She stated that her parents spent four to five hours cleaning the rental unit; however, "apparently [they] missed the microwave." She stated that they did clean the fridge and stove, and she vacuumed the carpet, but she did not clean it as it was past its useful life. Regarding the dishwasher, she stated that it stopped working within a year of the tenancy starting so she never used it and did not think to look in it at the end of the tenancy. With respect to the walls, she stated that the previous tenants put decals on the walls, and it was difficult to remove them. She stated that the transition strip had come off about three or four years into the tenancy and she fixed it herself. She disputed that it was loose or lifting at the end of the tenancy. Finally, with respect to the blinds, she stated that she pulled them up at the start of tenancy and then closed them, but when she did so, they warped. So, she simply raised them and never used them again.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the “*Regulations*”) outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant has a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports. As these Sections pertain to a Landlord’s right to claim for damage, and as the Landlord did not conduct a move-in inspection report with the Tenant, I find that the Landlord extinguished his right to claim against the security deposit.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant’s forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the forwarding address in writing was provided to the Landlord on December 13, 2019 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on December 12, 2019. While the Landlord made his Application within the 15-day frame to claim against the deposit, as he extinguished his right to claim against the security deposit, I find that he has not complied with the requirements of the *Act*. While he still was permitted to make an Application for

compensation for damages, as he did not return the deposit in full within the 15 days due to him extinguishing his right to claim against the deposit, I find that the doubling provisions do apply in this instance. As a result, I grant the Tenant a monetary award in the amount of **\$1,050.00**.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claims for compensation in the amount of \$525.00 to cover his expenses in bringing the rental unit back to a re-rentable state, even though there was no move-in inspection report to compare with the condition of the rental unit at the end of tenancy, I do find it important to note that the *Regulations* allow for consideration of a preponderance of evidence that supports the state of the rental unit documented in the move-out inspection report.

When reviewing the evidence before me with respect to the state of cleanliness that the rental unit was left in, I have before me the Landlord's pictures of the rental unit where there were specific deficiencies outlined and a quote from a cleaning company confirming how much it would cost to address all the issues. While the Tenant made submissions with respect to her efforts to clean the rental unit prior to giving up vacant possession of the rental unit, I find it important to note that the Tenant stated that she was in a rush to leave the rental unit. Furthermore, in conjunction with her statement that they "did the best they could", I find these statements support the Landlord's submissions with respect to the condition of the rental unit at the end of the tenancy. As a result, I prefer the Landlord's evidence on this point and find it more likely than not that the rental unit was not cleaned or left in a re-rentable state at the end of the tenancy. Moreover, even though the Landlord did the cleaning himself, I am satisfied from the quote provided by the cleaning company that the amount of cleaning required would have amounted to a cost equivalent to \$375.00.

With respect to the condition of the walls, I have before me the Landlord's evidence of significant damage to the walls that appear to me to be beyond reasonable wear and tear. Furthermore, based on the extent of the damage to the walls, I do not find it likely that the Tenant would have accepted the rental unit in this condition. As such, I am not

satisfied that this damage was caused by the previous tenant. While the Landlord's claim for \$400.00 to repair these issues also includes the cost of painting the walls, I find it important to note that the reasonable expected life of interior paint is four years and that the walls were last painted in 2009, so the paint was well beyond its useful life. As I am satisfied that the Tenant more likely than not caused damage to the walls and that this needed repair, I find that the Tenant should be responsible for this cost. However, as the walls were past their useful life and required painting anyways, I find that the actual cost to the Tenant for this repair should not exceed more than \$200.00.

When reviewing the Landlord's claims, as he was only seeking compensation in the amount of \$525.00, and as I am already satisfied that the cost of the required cleaning and repairing of the walls exceeded \$525.00, I do not need to address any of the other claims made by the Landlord. Based on the above, I am satisfied that the Landlord has established a claim in the amount of **\$525.00** to cover the costs associated with cleaning and repairing the rental unit.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to keep the security deposit to cover the \$525.00 claim awarded to the Landlord.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Doubling of security deposit	\$1,050.00
Filing fee	-\$100.00
TOTAL MONETARY AWARD	\$950.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$950.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: May 28, 2020

Residential Tenancy Branch