



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 9, 2020, wherein the Landlord sought monetary compensation from the Tenant for cleaning and repairs to the rental unit, authority to retain their security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on May 26, 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 Matter

The Tenants' name was inverted on the Application. Pursuant to section 64(3)(c) I amend the Landlord's Application to correctly note B.J.'s name.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?

2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and which indicates that this tenancy began July 1, 2018. Rent was \$1,525.00 in addition to \$20.00 for parking and the Tenants paid a security deposit of \$762.50. The Landlord's Agent, C.A. testified and confirmed that at the time the tenancy ended the rent was increased to \$1,563.50.

The tenancy ended February 29, 2020. The parties participated in the move in and move out condition inspection a copy of which was provided in evidence before me.

In the claim the Landlord sought monetary compensation for the following:

Paint	\$200.00
Blind cleaning	\$200.00
Sprinkler damage	\$88.68
Carpet cleaning	\$160.00
Filing fee	\$100.00
Total claimed	\$748.68

C.A. stated that the rental unit was completely painted in 2014. She stated that it was touched up and "made acceptable" in 2018. The Landlord submitted two photos of the walls, including one where there was a stain and then another depicting grease spots.

In terms of cleaning the blinds the Landlord failed to submit any photos of the blinds. The Landlord also confirmed they could not get anyone to clean the blinds due to the COVID-19 pandemic, and as a result they cleaned them themselves.

In terms of the sprinkler repair, C.A., stated that the sprinkler head in the grass had been knocked off and broken. C.A. confirmed that landscapers hired by the Landlord mow the lawn. She stated that the lawn can't be mowed when the sprinklers are on, such that the Landlord believes it must have been damaged by the Tenants.

The Landlord also requested the cost to clean the carpet. In support the Landlord provided a photo of the carpet showing a large stain.

In response to the Landlord's claim, the Tenant, H.G., testified as follows.

He confirmed they opposed the Landlord's claim for painting. He stated that when they moved in the paint was not new, although it had been touched up somewhat.

The Tenants also opposed to cleaning the blinds. He stated that once they gave their notice to end the tenancy, the Landlord did the inspection before they were able to clean. The Tenant stated that they cleaned the blinds in place.

In terms of the sprinkler head, the Tenant stated that one of the other renters told the Landlord that the sprinkler head was broken. The Tenant stated that he believed it was broken when they were not home. The Tenant also denied receiving a bill for the sprinkler head, until they moved out.

The Tenant stated that they own a carpet cleaner and used it to clean the carpets.

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.

The evidence before me confirms the rental unit was not painted since 2014.

Residential Tenancy Branch Policy Guideline 40 provides that interior paint has a useful building life of four years. Although I accept the Landlord's representatives' testimony that the paint was touched up before the tenancy began, I find that it would have required painting in any even of the tenancy. I therefore dismiss this portion of the Landlord's claim.

The Tenants claim they cleaned the blinds in place before vacating the rental unit. The Landlord testified that they personally cleaned the blinds as they were not able to hire third parties to do the work. I find the Landlord has failed to submit sufficient evidence

to support a finding that the Tenants did not clean the blinds. Further, I was not provided any evidence to support the \$200.00 claimed by the Landlord and it appears as though this amount was not actually spent. I therefore dismiss the Landlord's claim for \$200.00 for cleaning the blinds.

The Tenants deny damaging the exterior sprinkler head. The Landlord alleges the Tenants "must have" damaged it while the sprinkler was in operation. I am not satisfied, on balance, that the Tenants caused this damage. I therefore dismiss this portion of the Landlord's claim.

Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises provides the following guidance with respect to carpets:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

On balance, I accept the Landlord's evidence that the Tenants did not clean the carpet at the end of the tenancy. This is noted on the Condition Inspection Report as well as shown in the photos submitted by the Landlord. I do not accept the Tenant's testimony that they used their own personal carpet cleaner to clean the carpets. I therefore award the Landlord **\$160.00** in compensation for the cost to clean the carpets.

As the Landlord has only been partially successful in their claim, I award them \$50.00 of the \$100.0 filing fee for a total award of **\$210.00**. I authorize the Landlord to retain \$210.00 from the Tenants' security deposit and I grant the Tenants a Monetary Order for the balance of their deposit in the amount of **\$552.50** (: \$762.50 - \$210.00 = \$552.50). This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's claim for monetary compensation is granted in part. The Landlord is entitled to the sum of \$210.00 which they may recover from the Tenants' security deposit. The balance of the deposit is to be returned to the Tenants; to this end the Tenants are granted a Monetary Order in the amount of **\$552.50**.

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: June 4, 2020

Residential Tenancy Branch