



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDL-S, MNRL-S, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 9, 2020, wherein the Landlord requested monetary compensation from the Tenant for unpaid rent, cleaning and repairs costs, 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 June 5, 2020. Only the Landlord's representatives, D.D. and M.G. called into the hearing. D.D. gave affirmed testimony and was provided the opportunity to present the Landlord's 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's representatives 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. D.D. testified that they served the Tenant with the Notice of Hearing and the Application on March 20, 2020 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 March 25, 2020 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's agents and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent, cleaning and repairs to the rental unit?
2. Should the Landlord be authorized to retain the Tenant's 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 indicated this tenancy began July 1, 2016. At the time monthly rent was \$1,300.00 and the Tenant paid a \$650.00 security deposit. D.D. testified that when the tenancy ended the rent had been increased to \$1,425.00.

The tenant vacated the rental unit as of September 10, 2019 pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued September 9, 2019 (herein after referred to as the "Notice"; a copy of which was provided in evidence before me). At the time the Notice was issued the sum of \$1,425.00 was outstanding in rent.

The Landlord filed a Monetary Orders Worksheet in evidence which detailed the Landlord's claim as follows:

Unpaid rent for September 2019	\$1,425.00
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Unpaid rent for October 2019	\$1,425.00
Move out clean	\$525.00
Carpet cleaning	\$147.00
Junk removal	\$157.50
Replacement of light bulbs, smoke detector, electrical cover plates	\$362.36
Total claim	\$4,041.86

The Landlord claimed unpaid rent for September 2019 as well as well as October 2019. D.D. stated that the condition of the rental unit was so poor that they could not rent it until November 2019. Although the Landlord did not claim related compensation, D.D. also stated that the floor needed to be replaced due to a water leak and this made it impossible to re-rent the unit on October 2019.

The Landlord also claimed \$525.00 representing the amount they paid to clean the rental unit. In support they provided photos of the rental unit as well as a receipt for the amounts paid to the cleaner. Although the Landlord submitted a copy of the Move in Condition Inspection Report, they failed to provide a copy of the Move Out Report.

D.D. testified that the Tenant failed to clean the carpet as required. In support the Landlord provided a photo of the carpets after they had been cleaned and a copy of the invoice for cleaning. The person who completed the invoice wrote as follows:

“Cleaned Carpets in Unit #10, very Bad. Lots of extra chemicals needed. Turned out okay.”

In terms of the \$362.36 in “misc. items”, D.D. stated that the Landlord replaced light bulbs, a smoke detector and electrical cover plates when the tenancy ended.

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.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlord's evidence that the Tenant failed to pay the September 2019 rent when due. As such, I find the Landlord is entitled to the **\$1,425.00** claimed.

The Landlord claimed the rental unit could not be rented as of October 1, 2019 and sought compensation from the Tenant for the loss of rental income for that month. When asked to provide reasons why the unit could not be re-rented earlier, D.D. testified that the unit needed to be repainted and the floors needed to be replaced due to a water leak. Although the Landlord did not request compensation for the painting or floor replacement costs, I accept D.D.'s undisputed testimony that the rental unit was painted, and the floors were replaced after this tenancy ended.

That said, I was not provided any evidence as to when the unit was painted prior to this tenancy beginning nor was I provided any evidence as to the age of the flooring. *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* provides that interior paint has a useful building life of four years and hard wood flooring has a useful life of 20 years. As the tenancy began September 1, 2016, the paint was a minimum of three years old when the tenancy ended. Without any evidence as to the age of the floors, I find it possible the painting and floor replacement was required in any event of this tenancy and represent capital improvements, not repairs. Further, as the Tenant vacated the rental unit as of September 10, 2019, the Landlord had 20 days in which to complete this work prior to October 1, 2019. Finally, I was not provided any evidence of the Landlord's attempts to re-rent the unit, such as advertising, such that I am unable to find the Landlord mitigated this loss as required by section 7 of the *Act*. For these reasons, I dismiss the Landlord's claim for loss of rental income for the month of October 2019.

The Landlord also claimed the \$525.00 cost to clean the rental unit. As noted, the Landlord failed to provide a copy of the completed Move Out Condition Inspection. In support of their claim, the Landlord submitted photos of the rental unit which showed some debris in the kitchen cupboards and a bathtub which required cleaning. The other photos show marks and dirt on the walls and trim and baseboards; however, as the Landlord repainted the unit after the tenancy ended, I find that these areas would likely have needed to be cleaned/prepared for painting in any case. In all the circumstances I am unable to find that the rental unit was left in such a condition as to require \$525.00 in cleaning costs. I find some cleaning was required and I therefore award the Landlord the nominal sum of **\$150.00** for cleaning.

I accept the Landlord's undisputed evidence that they paid \$147.00 to have the carpets cleaned. *Residential Tenancy Branch Policy Guideline 1—Landlord & Tenant Responsibility for Residential Premises* provides that a Tenant must clean the carpets after a tenancy of more than one year. In this case the tenancy was three years such that I find they required cleaning. I am satisfied the Landlord paid the **\$147.00** to clean the carpets and I therefore award them recovery of this sum.

The photos submitted by the Landlord depict items left by the Tenant. Section 37 of the *Act* requires a Tenant to vacate a rental unit, which includes removing all personal items. I accept the Landlord's undisputed evidence that they paid \$157.50 to have the items left by the Tenant removed. I therefore award the Landlord the **\$157.50** claimed.

The Landlord also claimed \$362.36 for "misc. items". During the hearing D.D. testified that these items included replacement of light bulbs, a smoke detector and cover plates. The invoice provided in evidence indicated as follows:

Sales	\$165.00
Inspect, pick up materials, and install 22 LED light bulbs throughout	
Install 1 new smoke detector at lower level (expired 2017)	
Install 3 new receptacle cover plates	
Install 2 new blinds to entry-door sidelite	
Dispose of materials from repairs	
Materials/Shop Supplies	\$180.10
LED bulbs, cover plates, smoke detector, blinds	
G.S.T.	\$17.26
Total	\$362.36

There was no evidence before me that the 22 light bulbs in the rental unit were burnt out or removed by the Tenant. Similarly, there was no evidence before me that the Tenant damaged any of the receptacle cover plates or the blinds. Further, the smoke detector expired the year after the tenancy began. Based on the evidence before me, it appears the Landlord took the opportunity to replace these items when the tenancy ended, and the walls were being repainted. While these capital improvements may have enhanced the rental unit, I am unable to find the Tenant is responsible for reimbursing the Landlord for the related cost. I therefore dismiss this portion of the Landlord's claim.

As the Landlord has been partially successful in their claim, I award them recover of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation from the Tenant in the amount of **\$1,979.50** for the following:

Unpaid rent for September 2019	\$1,425.00
Move out cleaning costs	\$150.00
Cost to clean carpets	\$147.00
Junk removal	\$157.50
Filing fee	\$100.00
TOTAL AWARDED	\$1,979.50

I authorize the Landlord to retain the Tenant's \$650.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$1,329.50**. 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: June 10, 2020

Residential Tenancy Branch