



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided the following uncontradicted testimony. The tenancy began on June 1, 2018 for monthly rent of \$1,800.00 payable on the first of the month. The tenant provided a security deposit of \$900.00 and a pet deposit of \$900.00 which the landlord holds. The total of the deposits is \$1,800.00 and is referred to as "the security deposit".

The landlord submitted a copy of the signed tenancy agreement.

The landlord claimed compensation for damages caused by the tenant. The tenant agreed to compensate the landlord for \$147.00 for carpet cleaning and did not agree to compensate the landlord for the rest of the claims.

The remainder of the claims that are in dispute are listed as follows:

ITEM	AMOUNT
Cleaning – yard, dog waste	\$250.00
Debris removal	\$150.00
Tile cleaning - estimate	\$787.50
Wall repair - estimate	\$400.00
Temperature control unit – replacement - estimate	\$36.37
Window coverings - estimate	\$327.08
TOTAL	\$1,950.95

The landlord submitted receipts with respect to the cleaning and debris removal. The landlord submitted quotes with respect to the remainder of the claims. The landlord also submitted photos taken when the tenant vacated. The landlord did not submit photos or other evidence of the condition of the unit when the tenant moved in.

No condition inspection was conducted on moving in. A condition inspection was conducted on moving out signed by the parties and a copy was submitted.

The claims are examined in turn.

<i>Cleaning – yard, dog waste</i>	<i>\$250.00</i>
<i>Debris removal</i>	<i>\$150.00</i>

The landlord stated that the yard had considerable dog feces requiring clean up after the tenant vacated. The landlord provided photographic evidence and a copy of a receipt in the amount claimed.

The landlord stated that the tenant vacated the unit leaving “green waste” (tree trimmings and so on) requiring debris removal after the tenant vacated. The landlord provided photographic evidence and a copy of a receipt in the amount claimed.

The tenant acknowledged that she had a dog who used the yard of the unit. However, the tenant said, and the landlord acknowledged, that the yard was not completely fenced. The tenant testified that several other dogs used the yard on occasion as well. She said she cleaned the yard thoroughly 3 days before vacating, the dog was removed from the unit the day of the cleaning, and she was not informed there was a problem with the cleanliness of the yard until about two weeks after vacating.

When she was told about the clean-up cost of \$250.00 in mid-April, the tenant offered to return to the unit and do the cleaning herself. The landlord declined this offer. The tenant wrote an express lack of responsibility for the condition of the yard on the condition inspection report on moving out.

The tenant acknowledged leaving some “green waste” in the yard but stated that the waste was generated in helping the landlord maintain the landscaping. When she was told about the clean-up cost of \$150.00 in mid-April, the tenant offered to return to the unit and do the debris removal. The landlord declined this offer and informed the tenant she would be arrested if she returned.

In summary, the tenant denied responsibility for either of these expenses. The tenant further questioned the veracity of the receipts as the yard clean-up receipts listed a contractor who the tenant could not locate through internet searching. As well, the tenant testified that the invoice submitted by the landlord for the debris removal was a simple, computer-generated invoice, for a cash expense which did not appear to her to be legitimate.

Tile cleaning - estimate	\$787.50
Wall repairs estimate	\$400.00
Temperature control - replacement	\$36.37
Window coverings - estimate	\$327.08

The landlord testified as follows:

1. The landlord sold the unit and did not incur any of these expenses. The landlord estimated the damages and submitted quotes for each claim.
2. Expensive floor tiles were splattered by paint and the estimate to have them refinished was \$787.50 for which a quote was submitted.
3. One wall had damage including gouging requiring filling, priming and painting; the estimate for the repair was \$400.00 for which a quote was submitted.
4. A temperature control device was damaged; the estimate for the replacement was \$36.37; documentary support for this calculation was submitted.
5. The landlord stated there were window coverings in the unit which were missing when the tenant moved out; documentary support for this calculation was submitted.

The tenant denied all the landlord's claims. She stated as follows:

1. The tiles were paint splattered, the wall was damaged, the temperature control device was damaged, and the window coverings were not on the windows when the tenancy started.
2. The amounts claimed, especially for the cleaning of the tiles, is out of keeping with the repairs needed.
3. The landlord did not incur any expense for any of these items and never would as the house was sold "as is".

The landlord requested authorization to apply the security deposit to the award and for reimbursement of the filing fee of \$100.00.

The tenant requested that the landlord's claim be dismissed without leave to reapply, except for the carpet cleaning cost.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The hearing lasted 57 minutes and the version of events was contradictory in many respects.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy

agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I acknowledge each party has a different version of events and dissimilar assessments of the condition of the unit at the end of the tenancy.

Credibility and Weight of Testimony/Evidence

In assessing the weight of the testimony and evidence, I found the tenant credible and sincere. I believe her version of events and give her testimony the most weight. I believe the tenant's recounting of the facts.

For example, I found the tenant credible in claiming that she cleaned the feces from the yard a few days before moving out, that it was an open area, that other dogs used the yard, and the clean-up expense is unrealistically high. I also find her assertion credible that the green debris was as a result of landscaping efforts to improve the property. I believe her testimony regarding the condition of the unit when she moved in regarding the damage claimed by the landlord.

I found the landlord's testimony to be unconvincing and largely supported by claims for damages for which the landlord did not incur any expense. I find the landlord's threat to the tenant to charge her with trespassing if she came back to clean the yard and remove debris, to indicate unreasonable behaviour and a failure to mitigate. I found the landlord attempted to bolster weak and improbable claims for damage with unlikely quotations and testimony.

As a result of my assessment of the credibility of the parties, I gave greater weight to the tenant's account; where the evidence of the parties' conflicts, I prefer the tenants' version of events. I do not give significant weight to the landlord's testimony.

Each of the four tests are considered separately with respect to the landlord's claims. The one claim that is not considered is the landlord's claim for carpet cleaning as the tenant has agreed to compensate the landlord for this expense.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

The Act sets out the obligation of the tenant at the end of the tenancy:

Leaving the rental unit at the end of a tenancy

37 (1)...

(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) ...

The tenant did not acknowledge any responsibility for the landlord's disputed claims. The tenant claimed that she left the yard clean of feces and the "green debris" resulted from a reasonable use of the landlord's property, that is, carrying out essential landscaping.

In consideration of the testimony, the Act and Guideline, I find the landlord has met the burden of proof under the first factor with respect the cleaning of the yard and the removal of debris. I accept the tenant left some dog feces and debris in the backyard as evidenced in the photos.

I find the landlord cannot establish that the remainder of the purported damage was caused by the tenant. I find that the landlord has submitted no evidence of the condition of the unit at the beginning of the tenancy. For the reasons provided, I accept the tenant's evidence that she left the unit in the substantially the same condition in which she found it.

I therefore find the landlord has met the first test on a balance of probabilities with respect to the yard cleaning and debris removal only.

I find the landlord has not met the first test with respect to all the remaining claims.

As the landlord has failed to meet the burden of proof with respect to one of the tests and must meet all the tests, I find the landlord's application fails and is dismissed without leave to apply regarding the claims for wall damage, tile cleaning, replacement of curtains and replacement of control device.

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, regarding the feces in the yard and the debris, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

I accept the landlord's evidence that she incurred the expenses claimed to clean the yard of feces and remove the debris.

I find that the landlord would not have incurred the losses and damage claimed without the breach by the tenant of their obligations. I therefore find the landlord has met the burden of proof with respect to all items claimed under the second heading.

3. Has applicant proven amount or value of damage or loss?

Having found the landlord has met the burden of proof with respect to the first and second headings, I now turn to whether the landlord has proven the amount or value of the damage or loss.

I find the landlord has met the burden of proof on a balance of probabilities that the landlord has incurred expenses as claimed with respect to the yard cleaning and debris removal expenses.

4. Has applicant done whatever is reasonable to minimize damage or loss?

In considering the landlord's testimony, I determine the landlord did not take reasonable steps to minimize the damage or loss with respect to both expenses.

I accept the tenant's testimony that she offered to come back to the unit when she learned in mid-April 2020 that the landlord intended to claim these two expenses from her. The landlord explained her denial of the tenant's requests by saying that the work

had already been contracted. The landlord did not explain her reported threat to charge the tenant with trespassing if she returned to the unit to do the work.

I do not find this explanation to be reasonable. As the work had not taken place, I find it unreasonable that the landlord did not give the tenant an opportunity to clean the yard and remove the debris.

I also find the invoices to be excessive and unreasonable given the testimony and photos. The amount of the invoices seems to be out of keeping with the work described by the landlord and reflected in the evidence.

Summary

Taking into consideration the testimony and evidence, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving all the four criteria as required with respect to all items claimed.

As the landlord has not been substantially successful with respect to the landlord's claims, I do not grant the landlord reimbursement of the filing fee.

I grant the landlord an award of \$147.00 as agreed by the tenant for carpet cleaning.

I authorize the landlord to deduct this award from the security deposit. I direct the landlord to return the balance of the security deposit.

My award is summarized as follows:

ITEM	AMOUNT
Carpet cleaning – award to landlord	\$147.00
(Less security deposit)	(\$1,800.00)
Balance of security deposit to be returned to tenant	(\$1,653.00)

I grant a monetary order to the tenant in the amount of **\$1,653.00** for the return of the security deposit.

Conclusion

I grant a monetary order to the tenant in the amount of \$1,**653.00**. This order must be served on the landlord. This order may be filed and enforced in the Courts of the Province of British Columbia.

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: August 14, 2020

Residential Tenancy Branch