



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0404419 BC LTD RAP 11 THE
CONSERVATORY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MNRL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 4, 2020, wherein the Landlord sought monetary compensation from the Tenant for unpaid rent, cleaning and repairs to the rental unit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 on September 3, 2020. Only the Landlord's Senior Resident Manager, W.L. called into the hearing. She 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 1:50 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 W.L. 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. W.L. testified that she served the Tenant with the Notice of Hearing and the Application on May 7, 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 A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.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 May 12, 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 W.L. 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?
2. Should the Landlord be authorized to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

This fixed term tenancy began February 1, 2019. Monthly rent was \$2,270.00 and was to increase March 1, 2020 to \$2,329.00. The Tenant paid a security deposit of \$1,135.00 and a pet damage deposit of \$350.00 for a total of \$1,485.00 in deposits.

W.L. stated that the rental unit was brand new when the tenancy began such that she was the first tenant.

The Tenant vacated the rental unit March 31, 2020. As of the date the tenancy ended the Tenant owed \$2,354.00 including unpaid rent and parking. A copy of the Tenant Ledger was provided in evidence to support the amount claimed.

The Landlord also claimed \$2,594.59 for the cost to replace the floor. Photos of the floor submitted in evidence by the Landlord showed considerable scratching on the hardwood flooring. W.L. confirmed at the hearing that the floor was able to be repaired

at a cost of \$635.25; accordingly, the Landlord requested the repair, not replacement, cost.

The Landlord also stated that the walls needed to be repaired due to drywall being damaged by tape. W.L. confirmed that the Landlord was charged \$100.00 for this repair.

W.L. stated that the cleaner estimated that it would cost \$892.50 to clean the rental unit. W.L. confirmed that the cleaner did not want to do the cleaning as she did not believe she could get it done for that estimate. To minimize costs, and to ensure the cleaning would be completed for the new tenant, W.L. then did the cleaning herself. W.L. testified that it took her approximately 16 hours to complete the cleaning and she submitted a bill for \$617.50 representing an hourly rate of \$38.60 per hour. W.L. stated that local cleaners charge up to \$50.00 an hour depending on the nature of the cleaning, as such she believed that the \$38.60 claimed for her time was reasonable.

The Landlord also requested recovery of the filing fee of \$100.00.

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 rent and parking as required by the residential tenancy agreement. I therefore award the Landlord the **\$2,354.00** claimed.

Based on W.L.'s testimony and the photos submitted in evidence, I find the Tenants damaged the rental unit floor. I find the Landlord mitigated their losses by repairing rather than replacing the floor. I am satisfied the Landlord incurred the cost of **\$635.25**

to repair the floor and I find this amount to be recoverable from the Tenants pursuant to section 37 of the *Act*.

The photos submitted in evidence confirm that the walls were damaged by the Tenant. While a Tenant may hang pictures and art, they are expected to repair any damage; in this case I find the Tenant failed to repair the walls as required and I therefore award the Landlord the **\$100.00** claimed for wall repair.

I accept W.L.'s testimony that she spent 16 hours cleaning the rental unit. I am persuaded by her testimony as well as the photos submitted that the rental unit was not cleaned by the Tenant as required by section 37 of the *Act*. I also accept W.L.'s submission that she mitigated the Landlord's losses by cleaning the rental unit herself. I find the amount claimed to be reasonable based on W.L.'s testimony as to the rates charged by third party cleaners and I therefore award the Landlord the **\$617.50** claimed.

Having been substantially successful in the claim before me I find the Landlord is entitled to recovery of the **\$100.00** filing fee.

Conclusion

Pursuant to sections 38, 67 and 72 of the *Act*, the Landlord is awarded monetary compensation in the amount of **\$3,806.75** for the following:

| | |
|-------------------------|-------------------|
| Unpaid rent and parking | \$2,354.00 |
| Repair to damaged floor | \$635.25 |
| Wall repair | \$100.00 |
| Cleaning | \$617.50 |
| Filing fee | \$100.00 |
| TOTAL AWARDED | \$3,806.75 |

I authorize the Landlord to retain the Tenant's \$1,135.00 security deposit and \$350.00 pet damage deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$2,321.75**. 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: September 09, 2020

Residential Tenancy Branch