



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, MNDL-S, MNDCL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on April 27, 2020, wherein the Landlord sought monetary compensation from the Tenants, 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 September 1, 2020. The Landlord's Associate Broker, H.W., and the Tenants Y.K. and R.A. called into the hearing. Those in attendance 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with 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 confirmed that three tenants rented the rental unit, Y.K., R.A., and A.D. The tenancy began March 12, 2019. Monthly rent was \$2,300.00 per month and the Tenants paid a \$1,150.00 security deposit.

H.W. confirmed that he reached an agreement with one of the Tenant's, A.D., as to her 1/3 financial responsibility. In the hearing before me, the Landlord sought compensation from the remaining Tenants, Y.K. and R.A. for the 2/3 balance owing for the following expenses:

ITEM	Total	1/3 share	2/3 share
Hydro bill	\$102.53	34.18	68.35
Wall repair	\$300.00	100.00	200.00
Cleaning cost	\$315.00	105.00	210.00
Filing fee	\$100.00	33.33	66.66
Garbage removal	\$130.00	43.33	86.66
Love seat & mattress removal	\$90.00	30.00	60.00
TOTAL	\$1,037.52	\$345.84	\$691.68

The Landlord returned \$37.49 of the Tenants' security deposit to the Tenant, A.D. as per their agreement.

In support of the claim for monetary compensation the Landlord also submitted in evidence photos of the rental unit, including photos of items left by the Tenants, as well as copies of receipts for cleaning and junk removal.

R.A. responded to the Landlord's claim as follows.

In terms of the claim for hydro, R.A. stated that the B.C. hydro bill was in A.D.'s name such that she paid A.D. for the hydro and A.D. paid the bill. In written submissions she suggests the Landlord pursue reimbursement from A.D. as A.D. has already received payment from her other two roommates for this bill.

R.A. disputed the Landlord's claim for compensation for the wall repair in the amount of \$300.00. She stated that she agreed to cover the damage, but not the \$300.00 claimed as only one wall was damaged, which she believes would cost between \$100.00 to \$150.00 maximum.

In response to the Landlord's claim for cleaning costs, R.A. stated that she believed that the Landlord was charging for removal of scuff marks, which are normal wear and tear after three people living there.

In terms of the request for compensation for removal of items left, she noted that they were not her's and stated that there was only a few dishes left in one cupboard. She also stated that she believes the \$315.00 claimed is unreasonable, and does not seem like a legitimate claim as the receipt indicates the cleaners were in fact carpet cleaners. As to the \$130.00 claimed for garbage removal, R.A. stated that they did not leave any garbage, however she conceded they left behind a loveseat and mattress.

A.K. also testified as follows. She confirmed that she agreed to R.A.'s testimony.

A.K. confirmed that the hydro bill was in A.D.'s name and as A.D. paid the hydro bill such that there should not be owing.

In terms of the Landlord's claim for compensation for wall repair, A.D., stated that the repair was minimal and alleged the Landlord was charging an inflated amount.

In response to the Landlord's claim for cleaning and junk removal, she noted that he charged himself out at \$65.00 per hour, which she believes is an unreasonable hourly rate. She also stated that the majority of the items depicted in the photo were not hers, as she only left a love seat and mattress.

In reply to the Tenants' testimony H.W. confirmed that he hydro bill was in A.D.'s name; however, he stated that he paid the hydro bill as he worried the amount would attached to the property.

H.W. also stated that in terms of the wall repair, the paint peeled off when the sticky tape was removed. H.W. stated that the Landlord hired a painter and they realized that the rest of the walls needed to be painted as to only paint the damaged wall would look odd.

In terms of the "garbage removal and mattress/love seat removal" cost of \$220.00 H.W. confirmed that he did this work himself, but had to borrow a van and had to drive around to various places to donate or dispose of the varied items, including drawers, binders, a plant, a purse, a laundry bag, etc. He also stated that the minimum charge for removing all these items was \$90.00.

In terms of the cleaning costs, H.W., confirmed that the cleaning company do general cleaning and carpet cleaning. He also noted that they removed the dishes and the \$315.00 claimed included disposal of these items as well.

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.

When a co-tenancy exists the tenants are jointly and severally liable for any debts or damages. This means that a landlord can recover the full amount of rent, utilities, or damages owing from all or any one of the tenants. The co-tenants are responsible for dividing the amount owing to the landlord among themselves.

In this case, the Landlord made an agreement with the Tenant, A.D., as to her share of the outstanding amounts. The Landlord also returned a portion of the security deposit to her. A.D. was not at the hearing before me, nor was she named as a Respondent in the Landlord's Application.

In the claim before me the Landlord sought to recover the balance owing from the Tenants, Y.K. and R.A. I will address the Landlord's claim in its totality.

The Landlord claims monetary compensation for H.W.'s payment of the B.C. Hydro electrical utility bill. The evidence before me confirms that the bill was in the name of the Tenant, A.D. Both Tenants testified that they paid A.D. for their share of this utility. While the Landlord may have wanted to ensure this account was paid, the utility was not part of rent and not part of this tenancy agreement. I therefore decline the Landlord's request for compensation for the hydro utility.

The Landlord also sought compensation for the cost to repair the walls. A copy of the move out condition inspection report was provided in evidence before me and confirmed that some of the walls had scuff marks, but only one wall was damaged by double sided tape. I am satisfied, based on the Landlord's testimony, as well as the photos submitted that this one wall required repainting due to damage caused by the Tenants. Notably, this was also not disputed by the Tenant R.A. However, and while the Landlord may have opted to repaint the entire unit to ensure the paint matched, I am not satisfied this was a necessary expense. A tenant is responsible to repair damage, not reasonable wear and tear. As such, I award the Landlord the nominal sum of **\$100.00** for painting one wall in the rental unit.

The Landlord sought the sum of \$315.00 for cleaning the rental unit. The move out condition inspection report makes no mention that cleaning was required. That said, photos submitted by the Landlord confirm that numerous items were left behind in the rooms, cupboards and refrigerator such that I find some cleaning would have been required after their removal. I therefore award the Landlord the nominal sum of **\$100.00** for the cost to clean the rental unit.

The Tenants agreed that some items were left in the rental unit at the end of the tenancy. Although they denied responsibility for other items, as co-tenants they are responsible for ensuring all items are removed at the end of the tenancy. I accept H.W.'s testimony as to the various items left; this is also confirmed in the photos submitted by the Landlord. I also accept H.W.'s testimony that he borrowed a van and personally attended to disposing the Tenant's abandoned items at various locations as he tried to donate what he could. I also find that his hourly rate of \$65.00 per hour is reasonable. I therefore award the Landlord the **\$130.00** claimed for garbage removal and **\$90.00** for the disposal of the loveseat and mattress.

As the Landlord has been largely successful in this Application, I award the Landlord recover of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$520.00** for the following:

ITEM	Total
Wall repair	\$100.00
Cleaning cost	\$100.00

Filing fee	\$100.00
Garbage removal	\$130.00
Love seat & mattress removal	\$90.00
TOTAL	\$520.00

As the Landlord has retained the sum of \$345.84 from the Tenants' security deposit pursuant to an agreement with A.D. I find the Landlord is authorized to retain a further \$174.16 from the Tenants' \$1,150.00 security deposit towards the \$520.00 awarded. The balance of the Tenants' security deposit, \$630.00, is returnable to the Tenants. The evidence confirms that \$37.49 was provided to A.D. such that the Tenants are entitled to the remaining \$592.51. In furtherance of this I grant the Tenants a Monetary Order in the amount of **\$592.51**.

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 16, 2020

Residential Tenancy Branch