



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on May 15, 2020, in which she sought \$4,034.93 in monetary compensation from the Tenants, authority to retain their deposits and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 1:30 p.m. on September 18, 2020. Only the Landlord called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 2:54 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 and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord testified that she served the Tenants with the Notice of Hearing and the Application on May 21, 2020 by email.

At the time of service, and by Director's Order dated March 30, 2020, Notice of a hearing was able to be served by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The Landlord confirmed that they communicated by email during the tenancy; I accept the Landlord's testimony in this respect, and I find that the Tenants were deemed served with Notice of this participatory hearing May 24, 2020, three days after the email

was sent. I also note that the Tenants filed a document which they titled “rebuttal to her claim” which was in fact a “Tenant’s Application for Direct Request for Return of Security and/or Pet Damage Deposit” (#RTB-12T-DR). Although this form was not dated it was uploaded to the Residential Tenancy Branch Online service portal on September 9, 2020. In this document the Tenant’s address the Landlord’s claims such that it is clear they were served with the Landlord’s Application materials.

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 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 indicated that the tenancy began February 1, 2009. Originally the rent was \$1,650.00 and was raised to \$1,757.00 by the time the tenancy ended. The Tenants paid a security deposit of \$825.00, a pet damage deposit of \$500.00 and an oil tank deposit of \$1,000.00.

The tenancy ended April 30, 2020.

The Landlord filed a Monetary Orders Worksheet in which she detailed her claim as follows:

Yard work	\$155.00
Replacement of bedroom carpet	\$627.82
Disposal of yard waste	\$16.54
Hardwood floor damage (\$204.78 + \$136.50)	\$341.28
Cleaning and yard work completed by the Landlord	\$1,102.50

Cost to refill oil tank	\$1,160.46
Carpet cleaning	\$303.19
TOTAL CLAIMED	\$3,706.79

The Landlord testified that it was a term of the tenancy that the Tenants were to look after the yard. She stated that when the tenancy ended the yard was quite overgrown. In support of her testimony she submitted numerous photos of the yard as well as the invoice for this work. She claimed \$155.00 for the amount she paid others to clean up the yard and garden.

The Landlord also claimed compensation for the cost to replace the carpet in one of the bedrooms due to iron burns and oil stains in the bedroom carpet. In this respect the Landlord sought \$627.82. In support she provided numerous photos of the carpet as well as a copy of an estimate of the cost to replace the carpet. The Landlord testified that she took over as Landlord last year and as such she was not able to provide specific information as to the age of the carpets; although she noted that all the other carpets were in very good condition. She further noted that the company who provided the estimate for replacement was able to match the carpet completely as they were aware of the brand and type such that it was likely newer carpet.

The Landlord also sought \$341.28 in monetary compensation for the cost to repair hardwood floor damage caused by the Tenants. The Landlord submitted numerous photos of the flooring which showed scratches, holes and paint throughout the floor. She stated that the total cost to redo the floor was \$1,365.00 and confirmed that she requested only \$341.28 which represented 25% of that cost for the damage caused by the Tenants (15% for their "carelessness" such as obvious scratches and paint in addition to 10% for damage caused by their pets.)

The Landlord also sought monetary compensation for her personal time cleaning and yard work in the amount of \$1,102.50. The Landlord submitted numerous photos showing the condition of the rental property at the time the tenancy ended. She confirmed that she charged \$35.00 per hour for her time as this was less than she would have been charged by professional cleaners. She also stated that she gave them a move out cleaning checklist and the Tenants confirmed that they ran out of time to complete the cleaning.

The Landlord also claimed the cost to refill the oil tank. She stated that the oil tank was full when the tenancy began and at the request of the previous landlord, the Tenants provided a \$1,000.00 deposit on the oil at the time. When they moved out the tank was

completely empty. The Landlord noted that the Tenants' "rebuttal" confirmed they agreed that their \$1,000.00 deposit should be used to fill the tank.

The Landlord also claimed the cost to clean the carpets with a pet enzyme product and testified that although the Tenants cleaned the carpets they did not account for the impact of their pets and as such when the carpets dried, they smelled considerably. In her claim she provided the estimate she received from professional cleaners; however, at the hearing she confirmed that she did the work herself and it took her four hours and as such she was prepared to reduce her claim for carpet cleaning to \$140.00.

The Landlord also sought compensation for the filing fee.

The Landlord confirmed that she was aware the rental unit was not new and that she had taken over the tenancy. She stated that she also took into consideration the length of the tenancy and where applicable, reduced her claim to account for reasonable wear and tear. The Landlord also stated that she did not inflate her claim by requested amounts to bring the property to her standard (as she moved in after the tenancy ended), rather she limited her claim to what it would take to bring the property to a reasonable standard.

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 her 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 undisputed testimony and evidence with respect to the condition of the rental unit at the end of the tenancy. Her testimony was supported by numerous photos as well as estimates and receipts for the amounts incurred to clean and repair the rental unit. In all I find the Landlord has met the burden of proving the Tenants failed to leave the rental unit clean and undamaged as required by section 37 of the *Act*.

The photos submitted by the Landlord indicate the Tenants did not look after the yard as required by their tenancy agreement. These photos showed the garden beds overgrown with weeds, as well as grass and other weeds growing into the hardscaping. The after photos show the extent of work required to take care of these tasks. I accept the Landlord's evidence that she paid **\$155.00** to have the yard cleaned up and I award her compensation for the amount paid. I also award the Landlord the **\$16.54** claimed to dispose of related yard waste.

I also accept the Landlord's testimony and evidence that the bedroom carpet required replacement. The photos submitted by the Landlord show damage to the carpet. Further, photos of the carpet in other areas confirms that had it not been for the damage, the carpet could have been retained. While I do not have evidence as to the precise age of the carpet, I am satisfied the carpet was not reaching its useful building life as it was easily replaced with the exact same brand and make. Presumably, had the carpet been dated, this would not have been possible. I therefore award the Landlord the **\$627.82** claimed to replace the bedroom carpet.

I am also satisfied the Landlord is entitled to the **\$341.28** claimed for damage to the hardwood flooring. The photos submitted by the Landlord confirm the flooring was damaged at the end of the tenancy. I also find her request of 25% of the total repair cost to be reasonable in the circumstances. This request considers both the age of the flooring and the length of the tenancy.

The Landlord also sought compensation for her time cleaning the rental unit and the outside areas. In support she filed a large number of photos of the rental unit both before she cleaned and after. These photos show extensive dirt and grime on most surfaces including on the walls, cabinets, baseboards, window and door sills. I am satisfied based on these photos that it would have taken a considerable amount of time to clean these surfaces. The Landlord provided a four-page document titled "Landlord Cleaning List" which set out in detail the tasks she performed in cleaning both the inside and the exterior of the rental unit. The tasks listed coincide with the photos provided and confirm the testimony of the Landlord. I find the Landlord mitigated her losses by performing this work herself as I expect the cost would have been substantially higher had she hired professional cleaners. In all the circumstances, I accept the Landlord's evidence in this respect and award her the **\$1,102.50** claimed for cleaning.

I find it was a term of the tenancy agreement that the oil tank would be filled at the end of the tenancy. I accept the Landlord's evidence that the \$1,000.00 deposit for the oil was intended for this purpose. The Landlord provided an estimate to fill the tank from

the oil provider which supports the Landlord's claim for **\$1,160.46**. I find this amount to be recoverable by the Landlord.

I accept the Landlord's testimony that while the Tenants cleaned the carpets, they did not use a pet enzyme such that when the carpets dried, they smelled of pets. I also accept her testimony that she informed the Tenants that such an enzyme would need to be used. The Landlord confirmed that she did the cleaning herself thus reducing the overall cost. In this respect I find she mitigated her losses. I find the Landlord's request for compensation to properly clean the carpets to be reasonable and I award her **\$140.00** for this cleaning.

As the Landlord has been substantially successful in her claim I also award her recovery of the **\$100.00** filing fee.

Conclusion

The Landlord is granted monetary compensation in the amount of **\$3,643.60** for the following:

Yard work	\$155.00
Replacement of bedroom carpet	\$627.82
Disposal of yard waste	\$16.54
Hardwood floor damage (\$204.78 + \$136.50)	\$341.28
Cleaning and yard work completed by the Landlord	\$1,102.50
Cost to refill oil tank	\$1,160.46
Carpet cleaning	\$140.00
Filing fee	\$100.00
TOTAL AWARDED	\$3,643.60

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's \$825.00 security deposit, \$500.00 pet damage deposit and \$1,000.00 oil tank deposit towards the amounts awarded and I award her a Monetary Order for the balance due in the amount of **\$1,318.60**. This Order must be served on the Tenants 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 25, 2020

Residential Tenancy Branch