



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 August 7, 2020, wherein the Landlord sought monetary compensation from the Tenants, authority to retain the security deposit, and recovery of the filing.

Only the Landlord called into the hearing. He gave affirmed testimony and was provided the opportunity to present his 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 1:52 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 he served the Tenants with the Notice of Hearing and the Application on August 14, 2020 by registered mail. A copy of the registered mail tracking number for each package sent to the Tenants is provided on the unpublished cover page of this my Decision.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 Tenants were duly served as of August 19, 2020 and I proceeded with the hearing in their absence.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord be entitled to retain the Tenants' security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

This tenancy began December 1, 2017. Monthly rent was \$1,750.00 and the Tenants paid a security deposit of \$875.00 and a pet damage deposit of \$875.00.

The Landlord confirmed that the Tenants vacated the rental unit approximately 1-2 weeks prior to July 31, 2020. The Landlord then sold the property on August 15, 2020.

The Landlord testified that the Tenants failed to clean and repair the rental unit as required. Photos submitted by the Landlord supported this testimony.

In the hearing before me the Landlord filed a Monetary Orders Worksheet in which he detailed his claim as follows:

Cleaning	\$708.75
Carpet cleaning	\$270.85
Parking	\$20.00
Dump fees	\$10.00
Light bulb and misc. item replacement	\$49.45
Loss of rent for August 1-14	\$790.32
Blinds	\$146.94
Filing fee	\$100.00

In support of the claim for the above, the Landlord provided numerous photos of the rental unit as well as receipts for expenses incurred.

The Landlord provided written submissions indicating the Tenants refused to participate in the move out condition inspection. A copy of the #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection was also provided in evidence before me.

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 find the Tenants failed to clean the rental unit as required by section 37 of the *Act*. I have reviewed the photos submitted by the Landlord and they confirm the Tenants failed to leave the unit reasonably clean. In some instances, such as under the kitchen sink and inside the refrigerator, it appears as though the Tenants did not make any effort to wipe down or clean the surfaces. Similarly, it appears as though the Tenants did not even attempt to clean the stove and oven as required. I am satisfied the amounts claimed by the Landlord for cleaning are reasonable considering the condition the rental unit was left by the Tenants. I also accept the Landlord's testimony that the Tenants failed to clean the carpets as required by *Residential Tenancy Branch Policy Guideline 1*, as this is also supported by the photos submitted in evidence. I therefore award the Landlord the amounts claimed for general cleaning in the amount of **\$708.75** and carpet cleaning in the amount of **\$270.85**.

I accept the Landlord's testimony that the Tenant failed to pay the **\$20.00** parking fee and I award the Landlord recovery of this amount.

I also find the Tenants failed to remove all their items such that the Landlord incurred **\$10.00** in dump fees for related disposal. I find this amount recoverable from the Tenants as well.

I also find the Tenants removed the blinds and failed to replace the lightbulbs. The Landlord is entitled to recover the **\$156.94** replacement cost.

As the rental unit sold on August 15, 2020, I dismiss the Landlord's claim for loss of rent for half a month as I find it unlikely the rental unit would have been rented for that time period given its proximity to the sale.

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

I accept the Landlords' evidence and find that he complied with section 35(2) in terms of offering the Tenants opportunities for a move out condition inspection. I find the Tenants failed to participate in the move out condition inspection; as such and pursuant to section 36(1) of the *Act*, they have extinguished their right to request return of their deposits. For clarity I reproduce those sections as follows:

- 36** (1)The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a)the landlord complied with section 35 (2) [*2 opportunities for inspection*],
 - and
 - (b)the tenant has not participated on either occasion.

I therefore authorize the Landlord to retain the balance of the Tenants' security and pet damage deposit.

The Landlord submitted a letter from his realtor in which she estimates the sale price was reduced by approximately \$5,000.00 - \$10,000.00 due to the condition the rental unit was left in by the Tenants. The Landlord also testified that after the sale completed, he was informed the dishwasher did not work. He stated that to compensate the purchaser, he gave the purchaser \$500.00 cash. As these amounts were not claimed on the Application, I give the Landlord leave to reapply for further monetary compensation. The Landlord is reminded that this does not extend any deadlines imposed by the *Act*.

Conclusion

The Landlord is granted monetary compensation in the amount of **\$1,305.99** for the following:

Cleaning	\$708.75
Carpet cleaning	\$270.85
Parking	\$20.00
Dump fees	\$10.00
Light bulb and misc. item replacement	\$49.45
Blinds	\$146.94
Filing fee	\$100.00
TOTAL AWARDED	\$1,305.99

I authorize the Landlord to withhold \$1,305.99 from the Tenants' security and pet damage deposit towards the amounts awarded.

In failing to participate in the move out condition inspection, the Tenants have extinguished their right to request return of their deposits. As such I authorize the Landlord to retain the balance of the Tenants' \$1,750.00 in security and pet damage deposit. Accordingly the Landlord is not required to return any of the security or pet damage deposit to the Tenants.

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: November 27, 2020

Residential Tenancy Branch