



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 6, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation or loss;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application packages and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage, compensation, or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 1, 2019. During the tenancy, the Tenant was required to pay rent in the amount of \$2,000.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$1,000.00 which the Landlord continues to hold. The tenancy ended on August 1, 2020.

The Landlord is claiming monetary compensation in the amount of \$8,905.06 in relation to having to replace the carpeting in the rental unit. The Landlord stated that the carpet had been installed in 1993 and was in good condition at the start of the tenancy. The Landlord stated that at the end of the tenancy, the carpet was stained and smelled of urine. The Landlord stated that she attempted to clean the carpet, however, was not successful in removing the smell and stains. As such, the Landlord stated that she removed all the flooring, and replaced it with Vinyl Plank flooring.

The Landlord provided a quote for the work completed which outlined the cost of replacing the flooring in the den, living room, halls, three bedrooms, closet, and kitchen. The Landlord also provided pictures of the carpet before the start of the tenancy compared to at the end of the tenancy in support. The Landlord had included another quote in the amount of \$7,716.52, however, the Landlord withdrew this claim during the hearing as she did not utilise the company who provided the quote.

The Tenant responded by stating that the rental unit had not been updated for some time and that items such as the flooring had surpassed its useful life. The Tenant stated that the Landlord had mentioned that she intended on renovating the rental unit at the end of the tenancy, however, is now claiming against the Tenant for such upgrades.

The Tenant denied causing stains to the carpet and indicated that no damage was noted on the condition inspection report. Lastly, the Tenant stated that the Landlord also replaced the kitchen flooring which was in almost new condition. The Landlord stated that the kitchen flooring also needed to be replaced as it was at a different height than the rest of the flooring which had been installed.

The Landlord is claiming a total of \$82.15 in relation to cleaning products associated with the Landlord's attempts to clean the carpet prior to deciding that the carpet ultimately needed replacement. The Landlord provided receipts in support of these costs. The Tenant acknowledged that she was unable to perform a move out cleaning of the rental unit due to health reasons. The Tenant denied that the carpet was stained.

The Landlord is claiming \$34.70 in relation to repairing a bathtub that had some discolouration, which the Landlord suspects was caused by the Tenant improperly cleaning the bathtub. The Tenant denied that she caused any damage to the bathtub.

Lastly, the Landlord is claiming \$344.69 for paint and supplies associated with repairing damage to the walls which was caused by the Tenant during the tenancy. The Landlord stated that she had repainted the majority of the rental unit within the past 5 years. The Landlord stated that at the end of the tenancy, she noticed damage to most rooms, but especially in the bedrooms as a result of the Tenant using double sided on the walls.

The Landlord stated that once the tape was removed, it peeled off the wallpaper, which required extensive work to remove the rest of the wallpaper and to repaint the wall after. The Landlord provided pictures of the damage, as well as a receipt in support of the cost. The Tenant responded by stating that she did use double sided tape, but that it did not cause any damage to the walls in the rental unit.

If successful, the Landlord is seeking to retain the Tenant's security deposit, as well as to recover the filing fee paid to make the Application.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 32 of the *Act* requires a tenant to make repairs for damage that is caused by the action or neglect of the tenant, other persons the tenant permits on the property or the

tenant's pets. Section 37 requires a tenant to leave the rental unit undamaged.

Policy Guideline #1 helps interpret these sections of the Act:

The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

As set out in Policy Guideline #16, "the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party claiming compensation to provide evidence to establish that compensation is due."

Policy Guideline #40 ("PG #40") is a general guide for determining the useful life of building elements for determining damages. The useful life is the expected lifetime, or the acceptable period of use of an item under normal circumstances. If an arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost of the replacement.

The Landlord is claiming monetary compensation in the amount of \$8,905.06 in relation to having to replace the carpeting in the rental unit. The Landlord stated that the carpet had been installed in 1993 and was in good condition at the start of the tenancy. The Landlord stated that at the end of the tenancy, the carpet was stained and smelled of urine. As such, the Landlord stated that she removed all the flooring, and replaced it with Vinyl Plank flooring.

I find that the quote provided by the Landlord included flooring replaced in the den, living room, halls, three bedrooms, closet, and kitchen. In this case, I find that the Landlord provided insufficient evidence to demonstrate that the Tenant caused damage to the flooring to the extent that all the flooring needed to be replaced. Specifically,

during the hearing, the Landlord stated that the flooring in the kitchen was only replaced as it was not level with the new flooring installed in other areas.

I accept that the carpet had been in the rental unit since 1993. According to PG#40, the useful life of carpet is 10 years. I find that the carpet in the rental unit has far exceeded its useful life. In light of the above, I dismiss the Landlord claim for floor replacement without leave to reapply, as the Landlord provided insufficient evidence that all the flooring in the rental unit required replacement, as well as the carpet that had been in the rental unit, had exceeded its useful life.

The Landlord is claiming a total of \$82.15 in relation to cleaning products associated with the Landlord's attempts to clean the carpet in the rental unit. In this case, I find that the Landlord provided sufficient evidence to demonstrate that the carpet required further cleaning at the end of the tenancy. During the hearing, the Tenant acknowledged that she did not clean the rental unit at the end of the tenancy. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$82.15**.

The Landlord is claiming \$34.70 in relation to repairing a bathtub that had some discolouration, which the Landlord suspect was caused by the Tenant improperly cleaning the bathtub. I find that the Landlord provided insufficient evidence that the Tenant caused any damage to the bathtub. I find that the condition inspection report makes no mention of damage to the bathtub at the end of the tenancy and the Landlord provided no photographic evidence of the damage to the bathtub. As such, I dismiss the Landlord's claim without leave to reapply.

Lastly, the Landlord is claiming \$344.69 for paint and supplies associated with repairing damage to the walls which was caused by the Tenant during the tenancy. The Landlord stated that she had repainted the majority of the rental unit within the past 5 years. The Landlord stated that at the end of the tenancy, she noticed damage to most rooms, but especially in the bedrooms as a result of the Tenant using double sided on the walls. The Tenant responded by stating that she did use double sided tape, but that it did not cause any damage to the walls in the rental unit.

In this case, I find that the Landlord provided sufficient evidence to demonstrate that several walls throughout the rental unit required repair and painting. I find that it is reasonable to expect that double-sided tape could have caused damage to the wallpaper that it was placed on. As such, I find that the Landlord is entitled to monetary compensation in the amount of **\$344.69**.

Having been partially successful, I find the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. I also find it appropriate in the circumstances to order that the Landlord retain \$526.84 from the \$1,000.00 security deposit held in satisfaction of the claim ($\$1,000.00 - \$526.84 = \$473.16$).

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$473.16, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation in the amount of \$526.84 which has been deducted from the Tenant's security deposit. The Tenant is granted a monetary order in the amount of \$473.16 which represents the remaining balance of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 26, 2020

Residential Tenancy Branch