



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlords attended ("the landlord"). The landlord was given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 15 minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Service

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on September 26, 2020 at his residential address and deemed received by the tenant under section 90 of the *Act* five days later, that is, on October 1, 2020.

The landlord provided the Canada Post Tracking Number in support of service. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on October 1, 2020.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72

Background and Evidence

The landlord testified the tenancy began on September 7, 2016. Monthly rent payable on the first of the month was \$2,700.00. At the beginning of the tenancy, the tenant provided a security deposit of \$1,250.00 which the landlord holds. The landlord submitted a copy of the tenancy agreement.

Condition Inspection Report

The landlord testified that a condition inspection was conducted on moving in. The landlord submitted a copy of the condition inspection report as evidence. The report indicated the unit was in good condition in all material aspects on moving in.

The landlord testified that a condition inspection was scheduled between the parties on the last day the tenant occupied the unit. The landlord attended at the scheduled time. The tenant did not attend and had already vacated the unit; the tenant did not respond

to the landlord's calls or texts. The landlord accordingly completed the condition inspection report by themselves, a copy of which was submitted.

The landlord testified the tenant did not provide a forwarding address to the landlord in writing. The landlord brought this Application before the end of the tenancy.

Summary of Claim

The landlord testified to the following as the basis of the landlord's claim for damages:

ITEM	AMOUNT
Rent	\$1,400.00
Carpet cleaning	\$157.50
Carpets	\$2,839.07
Painting and repairs	\$1,417.50
Replacement 6 window screens	\$189.00
Replaced two light fixtures, 2 locks and cleaning	\$525.00
Reimbursement filing fee	\$100.00
TOTAL CLAIM LANDLORD	\$6,628.07

The landlord requested compensation as stated above and authorization to apply the *security deposit to the award for a final claim as follows:*

ITEM	AMOUNT
Damages, above	\$6,628.07
(Less Security deposit)	(\$1,250.00)
TOTAL AWARD	\$5,378.07

Each claim is addressed.

Rent

The landlord testified that the tenant vacated the unit owing \$1,400.00 in outstanding rent pursuant to the submitted agreement. The landlord requested compensation in this amount.

Carpets

After the tenant vacated, the landlord testified that they found the unit dirty and needing cleaning. As well, the unit was damaged requiring replacement of items and repair.

The landlord described the carpets as badly stained. The landlord submitted several photographs in support of their testimony that the carpets were still stained after cleaning and had to be replaced.

The landlord testified that the carpets were new in 2007; the landlord then changed their testimony during the hearing and stated that the carpets were replaced in 2015. In support of their testimony, the landlord submitted no documentary evidence of the age of the carpet.

The landlord submitted a receipt for \$2,839.07 for the purchase and installation of new carpet.

Painting and repairs

The landlord testified the unit required repairs to the walls and complete repainting after the tenant vacated. The landlord submitted photographs of the walls in support of their testimony that the tenant caused multiple holes in the wall and many scratches/marks.

The landlord testified the unit was freshly painted when the unit was purchased in 2007. The landlord then changed their testimony during the hearing and stated that the unit was repainted in 2015. In support of their testimony, the landlord submitted no documentary evidence of the age of the paint in the unit.

The landlord submitted an estimate for \$1,417.50. No receipt was provided.

Replacement two light fixtures, 2 locks and cleaning

The landlord testified the landlord incurred an expense of \$525.00 for repair and replacement of damaged lights and locks as well as cleaning; a receipt was submitted. Photographs were submitted in support of the claim.

Replacement 6 Window Screens

The landlord testified the landlord incurred an expense of \$189.00 for replacement of window screens. A receipt in this amount was submitted.

In conclusion, the landlord requested a Monetary Award of **\$6,628.07** less the security deposit for a final award of **\$5,378.07** as itemized above.

Analysis

I have considered all the submissions and refer only to key facts.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided 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.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Rent

The landlord testified the tenant did not pay rent due until the end of the tenancy; at the time the tenant vacated the tenant owed \$1,400.00 in outstanding rent.

I am satisfied based on the landlord's uncontradicted testimony and evidence, including the submission of a copy of the tenancy agreement and a Monetary Order Worksheet, that the tenant is responsible for outstanding rent as claimed.

I accordingly find the landlord has met the burden of proof with respect to this aspect of the claim. I find that the tenant is responsible to reimburse the landlord for rent claimed. I allow the landlord an award for outstanding rent as claimed.

Carpet cleaning

I am satisfied based on the landlord's uncontradicted testimony and evidence, including supporting photographs, that the carpet needed cleaning. I award the landlord the amount requested.

Carpet – replacement

In determining damages related to repair and replacement costs for building elements, my assessments are determined in accordance with *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements*. This Guideline notes:

Useful life is the expected lifetime, or acceptable period of use, of an item under normal circumstances...if the 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 or replacement.

Based on the Guideline, the useful life of carpet is ten years.

The Guideline states that "landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement item". The landlord testified the flooring was either 13 years old or 5 years old (age revised during the hearing) at the end of the tenancy.

The landlord submitted no evidence of the age of the carpet. While I accept that the carpet was stained and old, I find the landlord has not met the burden of establishing the age of the carpet.

I therefore find the landlord is not entitled to compensation for the replacement of the flooring. I dismiss this claim without leave to reapply.

Painting and repairs

The Guideline with respect to the useful life of building elements states that paint has a useful life of 4 years. Applying the Guideline, I therefore find that the paint had no remaining useful life.

I also find the landlord has only submitted an estimate of painting and repair expenses; the landlord has not submitted evidence of actual expenses for painting and repairs.

I find the landlord has not met the burden of proof for a claim under this heading. This claim is dismissed without leave to reapply.

Replacement 6 window screens; Replaced two light fixtures, 2 locks and cleaning

I accept the landlord's testimony supported by receipts that the landlord incurred the above expenses. I find the landlord has met the burden of proof with respect to these claims which are allowed.

Reimbursement filing fee

The landlord is granted reimbursement of the filing fee as claimed as the landlord has been substantially successful in their application.

Security Deposit

Pursuant to the provisions of section 72, the landlord may apply the security deposit to the award.

Summary of Award

As stated above, my award to the landlord is as follows:

ITEM	AMOUNT
Rent	\$1,400.00
Carpet cleaning	\$157.50
Replacement 6 window screens	\$189.00
Replaced two light fixtures, 2 locks and cleaning	\$525.00
Reimbursement filing fee	\$100.00
(Less security deposit)	(\$1,250.00)
MONETARY AWARD LANDLORD	\$1,121.50

Conclusion

The landlord is entitled to a Monetary Order of **\$1,121.50**. This Order must be served on the tenant. This Order may be filed and enforced as an Order of the Courts of British Columbia.

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 04, 2020

Residential Tenancy Branch