



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 September 10, 2020, wherein the Landlord sought monetary compensation from the Tenant for damage to the rental unit, authority to retain the Tenant's 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 December 22, 2020. Both parties called into the hearing and 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.

Preliminary Matter

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

On the Application the Property Manager named himself as Landlord. A review of the tenancy agreement confirms the Landlords are the owners of the rental property. I therefore Amend the Tenant's Application to correctly name the owners as the Landlord.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant?
2. Should the Landlords be authorized to retain the Tenant's security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord's Property Manager, G.C. testified as follows. He confirmed that this tenancy began May 1, 2017. Monthly rent is \$2,900.00 and the Tenant paid a \$1,450.00 security deposit.

The tenancy ended on August 31, 2020. A copy of the move in and move out condition inspection report was provided in evidence before me.

G.C. stated that the rental unit was built in approximately 2016. He testified the carpets were approximately four years old when the tenancy ended. He also claimed that the rental unit was painted right before the tenancy began.

G.C. confirmed that the Landlord incurred over \$8,000.00 in expenses to repair and clean the rental unit. In this respect they filed a Monetary Orders worksheet in which the following were noted:

Replacement of door lock	\$350.00
General repairs	\$1,678.53
Repair to window screens and locks	\$173.25
Carpet cleaning	\$139.65
Dishwasher replacement	\$580.00
Painting	\$2,415.00
Carpet replacement	\$2,881.20
TOTAL	\$8,217.63

(note: these descriptions were updated based on G.C.'s testimony).

G.C. confirmed that although the Landlord incurred significantly more in expenses, they only wished to retain the \$1,450.00 security deposit and as such reduced their claim to this amount.

In terms of the \$1,678.53 claimed for repairs, G.C. stated that this included replacement of the hardwood flooring, fixing of the wall damage, and repairing the door and window locks and light fixture. Photos submitted by the Landlord confirm this damage.

G.C. confirmed that they tried to clean the carpets, but when the stains could not be removed, the Landlord replaced it at a cost of \$2,881.20. In support the Landlord provided photos of the rental unit which showed significant staining of the carpet as well as burn holes.

The Landlord also claimed \$580.00 to replace the dishwasher with a second-hand dishwasher.

The Landlord also claimed the sum of \$2,415.00 for painting.

The Tenant responded to the Landlord's claims as follows. The Tenant stated that the rental unit is 3,000 square feet and submitted that the amount claimed by the Landlord was not just for alleged damage, but rather the Landlord must have repainted the entire unit.

The Tenant also stated that the rental unit was 10 years old and the Landlord is the third owner. The Tenant also argued that the carpet was 10 years old at the time the tenancy ended. The Tenant confirmed he did not pay to have the carpets professionally cleaned when the tenancy ended as when he moved in, they weren't cleaned, and the Landlord told him he didn't have to clean them when he moved out.

The Tenant stated that the dishwasher hadn't worked for months and broke down three times during the tenancy. The Tenant further stated that he was behind in rent and as such he never pushed the issue.

In terms of the door, the Tenant stated that he provided a new door and a new lock mechanism. He stated that the Landlords' "guy" was going to install it and they were new in the package. He therefore disputed the amounts claimed by the Landlord.

The Tenant also noted that the Landlord installed hardwood flooring yet there was no hardwood flooring in the unit during his tenancy. As such, he disputed this amount as being an upgrade and not necessary.

The Tenant stated that he was not present during the move out condition inspection but was present two days before. The Tenant claimed they left it in “beautiful condition” when they moved out, save and except for the carpet on the landing when they were moving furniture.

The Tenant confirmed that it was his position that the rental unit was left reasonably clean and any “damage” was in fact reasonable wear and tear such that the Landlord’s claims should be dismissed.

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.

In this case the parties completed a move in and move out condition inspection report. This information noted on the move out report confirmed the following:

- water damage to the kitchen cabinets;
- missing light covers, light bulbs, screens and a door and lock;
- a broken light cover in the kitchen;
- broken screens; and,
- damaged carpet.

Section 21 of the *Residential Tenancy Regulation* affords significant evidentiary value to condition inspection reports and reads as follows:

21 In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The Tenant confirmed he was not present during the move out condition inspection, and stated he was there two days prior. Aside from the Tenant's testimony that the unit was left clean, I was not provided any evidence contrary to the contents of the condition inspection report. Further, the Landlord's agent's testimony and photos support the Landlord's claim that the rental unit was left damaged and not clean. I also note that the information contained in the move out report was consistent with the photos submitted by the Landlord as well as the Property Manager's testimony which I accept. I therefore afford the move out condition inspection considerable evidentiary weight and accept the report for the truth of its contents.

Conversely, I do not accept the Tenant's testimony as to the condition of the rental unit. During the hearing before me, the Tenant submitted that he left the rental unit in "beautiful condition". This is simply not supported by the photos submitted by the Landlord, nor is it consistent with the move out condition inspection report. I find this testimony to lack credibility.

The evidence confirms the door lock needed to be replaced. I do not accept the Tenant's evidence that he left a replacement door and lock at the rental unit. I therefore find the Landlord is entitled to the \$350.00 replacement cost.

I also accept the Property Manager's testimony that the Landlord incurred the cost of general repairs in the amount of \$1,678.53 as well as the cost to repair the window screens and locks in the amount of \$173.25.

The photos confirm the carpets were left considerably stained. *Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises* provides the following guidance with respect to carpets:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

In this case, the Tenant failed to clean the carpets. I do not accept his testimony that he was told not to clean them when the tenancy ended. I therefore find the Landlord is entitled to the \$139.65 claimed for carpet cleaning.

I accept the Property Manager's testimony that although they tried to clean the carpets, they were so stained they required replacement. I also accept his testimony that the carpets were four years old.

Awards for damages are intended to be restorative and should compensate the party based upon the value of the loss. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, and to determine the useful life of a given building element, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements*. *Policy Guideline 40* provides that carpets have a ten year life span. As such, the replacement cost of \$2,881.20 must be reduced by 40% to account for the age of the carpet; therefore, the Landlord is entitled to the sum of \$1,728.72.

I find the Landlord submitted insufficient evidence to support a finding that the dishwasher needed to be replaced and the rental unit repainted. I therefore dismiss this portion of the Landlord's claim.

I find the Landlord has met the burden of proving their claim for the following:

Replacement of door lock	\$350.00
General repairs	\$1,678.53
Repair to window screens and locks	\$173.25
Carpet cleaning	\$139.65
Carpet replacement	\$1,728.72
TOTAL	\$4,017.15

While I am satisfied the Landlord is entitled to the above compensation based on the evidence before me, the Property Manager confirmed that the Landlord sought only to retain the Tenant's security deposit in the amount of \$1,450.00. I therefore award the Landlord the nominal sum of **\$1,450.00** as compensation for the costs to repair and clean the rental unit. Pursuant to sections 38 and 72 of the *Act*, I grant the Landlord

authority to retain the Tenant's \$1,450.00 security deposit towards the amounts awarded.

As the Landlord reduced their claim to \$1,450.00, I dismiss the Landlord's claim for recovery of the \$100.00 filing fee as to award this sum would exceed the amount requested by the Property Manager at the hearing before me.

Conclusion

The Landlord's claim for monetary compensation from the Tenant is granted. The Landlord is entitled to the nominal sum of \$1,450.00 for cleaning and repair costs. Pursuant to sections 38 and 72 the Landlord may retain the Tenant's **\$1,450.00** security deposit towards this amount.

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: January 21, 2021

Residential Tenancy Branch