Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL
MNSDS-DR, FFT

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution, filed on October 11, 2020, she sought monetary compensation from the Tenant for unpaid rent, repair costs and recovery of the filing fee. In the Tenant's Application for Dispute Resolution, filed on November 8, 2020, he sought return of his security deposit and recovery of the filing fee.

The hearing of the parties' applications was scheduled for teleconference at 1:30 p.m. on February 1, 2021. Both parties called into the hearing. The Tenant was also assisted by C.W. who acted as a translator. Both parties 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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. What should happen with the Tenant's security deposit?

3. Should either party recover the filing fee?

Background and Evidence

The Landlord testified as follows. She stated that the tenancy began February 1, 2020. Monthly rent was $2,500.00 and the Tenant paid a $2,000.00 security deposit. The tenancy ended on September 30, 2020.

The Landlord sought monetary compensation in the amount of $4,385.00 which included $1,785.00 for repairing the walls, floor and door. In support of her claim she provided photos of these items taken at the end of the tenancy. The Landlord also submitted a receipt for the cost she incurred to repair the damage.

The Landlord claimed that she did a move in “walk through” but did not complete it on the proper form.

The Landlord stated that she bought the rental unit in 2017 and believes that the apartment was built in 2013. As a result, when the tenancy ended the floors were seven years old. The Landlord confirmed that she did not paint the walls during the tenancy such that the wall paint was also seven years old.

The Landlord also sought monetary compensation for unpaid rent for $2,500.00 for May 2020. She provided text communication with the Tenant confirming that he originally wanted to pay in a different currency, which she refused, following which she claims he did not make the payment. During her testimony she stated that she never followed up with him about the May 2020 payment as she thought she would just “get it at the end”.

In response to the Landlord’s claims and in support of his Application, the Tenant testified as follows. The Tenant stated that he paid the Landlord cash for the May 2020 rent. He noted that she never asked again for the payment, because she in fact received the rent.

The Tenant denied damaging the floors, wall and doors. He stated that they were in the same condition as when he moved in and confirmed that the Landlord did not do a move in inspection. He stated that it was very late on the day he moved in (11:00 p.m. on January 31, 2020) and they did not do a proper inspection.

The Tenant stated that the previous tenants did not do any cleaning or repair. He initially offered to have the rental unit professionally cleaned but due to the cost the Landlord, her boyfriend and her family members did the cleaning.

The Tenant stated that he did not damage the floor, walls or doors as alleged by the Landlord. He stated that the microwave handle and the bar in the bathroom broke, because they were of poor quality, but when he moved out he fixed both. He also noted that the Landlord also did not do a move out condition inspection.

The Tenant testified that he gave the Landlord his forwarding on September 27, 2020 when he moved out as well as on "WeChat".

The Tenant confirmed that the Landlord did not return his $2,000.00 security deposit, nor did he agree to her retaining any portion of his deposit.

In reply the Landlord stated that she received the Tenants' forwarding address on October 1 or 2, after the tenant fixed the microwave handle and towel bar.

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. 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.

In this case the Landlord seeks monetary compensation for unpaid rent for May 2020. She claims that the Tenant initially offered to pay in a different currency, and when she refused to accept it, he failed to pay the May rent. She also testified that she did not raise the issue again as she thought she would get the rent "at the end". The Tenant testified that he paid the May rent in cash and stated that the reason she didn't raise this issue again is because she had received payment.

In the normal course when a tenant fails to pay rent a landlord sends a reminder to the tenant following which a 10 Day Notice to End Tenancy for Unpaid Rent is issued. There was no evidence that any such communication occurred following the alleged failure to pay the May rent. I find the absence of such communication to support the Tenant's testimony that he paid the May rent. I find it unlikely the Landlord would simply wait until the end of the tenancy to pursue this amount. On balance, I find the Landlord has not met the burden of proving the Tenant failed to pay the May 2020 rent and I dismiss this portion of her claim.

The Landlord also seeks monetary compensation for the costs incurred to repair the walls, floors and doors. The Tenant denies the rental unit was damaged and opposes the Landlord's claims.

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.

Pursuant to section 23 and 35 of the *Act,* a landlord is required to complete a move in and move out condition inspection report at the start of a tenancy and when a tenancy ends. Such reports, when properly completed, afford both the landlord and tenant an opportunity to review the condition of the rental unit at the material times, and make notes of any deficiencies.

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 importance of condition inspection reports is further highlighted by sections 24 and 36 as these sections provide that a party extinguishes their right to claim against the deposit if that party fails to participate in the inspections as required (in the case of the landlord this only relates to claims for damage; a landlord retains the right to claim for unpaid rent.)

The evidence confirms that the Landlord did not perform a move in or move out condition inspection report as required by the *Residential Tenancy Act* and the *Residential Tenancy Regulation.* As such, I was not provided with any documentary evidence as to the condition of the rental unit when the tenancy began.

The Tenant denies he damaged the rental unit and testified that he left it in the same condition as when he moved in. Without corroborating evidence as to the condition of the rental unit at the start of the tenancy, such as a move in condition inspection report, I find the Landlord has failed to meet the burden of proving the Tenant damaged the rental unit. I therefore dismiss her claim for the cost to repair the rental unit.

I also note the following. The Landlord submitted photos of the rental unit taken when the tenancy ended. She provided only two photos of the living room wall. These photos

show minimal wear and tear on the walls, save and except for one photo which was clearly taken when the wall repair was applied and not even smoothed out or sanded.

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, guidance can be found in *Residential Tenancy Branch Policy Guideline 40—Useful Life of Building Elements* which provides in part as follows:

> When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.
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> 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.

Policy Guideline 40 also provides a table setting out the useful life of most building elements. According to this table, interior paint has a four-year useful life. In this case the Landlord testified that the paint in the rental unit was likely from 2013, such that it was seven years old when the tenancy ended. As such, I find it likely the rental unit would have required repainting in any event of this tenancy.

The Landlord also sought compensation for the cost to repair the laminate flooring. The invoice submitted by the Landlord indicated the laminate flooring was "touched up and repaired". The photos of the flooring suggest they were worn over time. Again, without evidence as to the condition of the floors when the tenancy began, I am not satisfied the Tenant was responsible for the condition of the laminate flooring when this tenancy ended.

As the Landlord has been unsuccessful in her claim, I dismiss her request for recovery of the $100.00 filing fee.

I find this tenancy ended on September 30, 2020. While the Tenant may have provided the Landlord with his forwarding address a few days earlier, section 38(1) of the *Act* provides that a Landlord has 15 days from the latter of the date the tenancy ends or receipt of the Tenant's forwarding address in which to return the funds or apply for Dispute Resolution. In this case, the Landlord applied for dispute resolution on October

11, 2020 such that she made her claim within the required 15 days; as such, the doubling provisions of section 38(6) of the *Act* do not apply.

The Tenant's request for return of his $2,000.00 security deposit is granted. As he has been successful in his claim, he is also entitled to recover the $100.00 filing fee for a total of **$2,100.00.** In furtherance of this, I grant the Tenant a Monetary Order in the amount of **$2,100.00.** This Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

The parties are reminded of the limits set on security deposits set out in section 19 of the *Act* which reads as follows.

> **Limits on amount of deposits**
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> 19 (1)A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
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> (2)If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Conclusion

The Landlord's claim for monetary compensation for unpaid rent, repairs to the rental unit and recovery of the filing fee is dismissed without leave to reapply.

The Tenant's claim for return of his security deposit and recovery of the filing fee is granted.

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: February 17, 2021

Residential Tenancy Branch