



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, 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.

All parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

At the start of the hearing, I informed the parties that recording of the hearing is prohibited under the Rules of Procedure. Each party confirmed they were not recording the hearing.

Each party confirmed their email addresses to which the Decision will be sent.

No issues of service were raised.

Settlement Discussions During Hearing

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

During the hearing, the parties engaged in discussions regarding resolution of the dispute. The parties were unable to reach a Decision and the hearing continued.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, authorization to apply the security deposit to the award, and reimbursement of the filing fee?

Background and Evidence

This is a claim by the landlord for compensation for cleaning expenses allegedly caused by the tenant leaving the unit unclean.

The parties submitted many documents and photographs as well as considerable disputed testimony in an 77-minute hearing.

While I have turned my mind to all the evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

A copy of the tenancy agreement was submitted. The parties agreed to the background of the tenancy summarized as follows:

INFORMATION	DETAILS
Type of tenancy	Fixed term
Date of beginning	July 12, 2020
Date of ending by consent	January 12, 2021
Length of tenancy	6 months
Monthly rent payable on 1 st	\$2,000.00
Security deposit	\$1,000.00

Forwarding address provided	March 9, 2021
Date of landlords' Application	March 20, 2021

The parties carried out a condition inspection at the start of the tenancy a copy of which was submitted.

The parties have different versions of what took place at the end of the tenancy. They both agreed that they met on January 12, 2021 at the unit for a condition inspection. Before the report was filled out, the landlord told the tenant the floor needed more cleaning. The parties agreed that the tenant would return the following day with cleaning supplies and wipe up the floor again. When the tenant returned the following day prepared to clean the floor again, the landlord informed him of further cleaning he wanted done. The tenant became upset and left the unit.

The tenant testified as follows. The only complaint the landlord had on January 12, 2021 was the cleanliness of the floor. The tenant in his written statement described the product he used to clean the floor. Nevertheless, the tenant stated he was willing to clean it again. He understood that if he cleaned the floor again, he would get his security deposit back. However, when he returned the following day with cleaning supplies, the landlord wanted more cleaning done. The tenant believed this was unfair and unreasonable and a betrayal of their agreement. He became angry and left.

In summary, the tenant stated the unit was reasonably clean when he moved out.

The landlord, on the other hand, testified as follows. He told the tenant at the first meeting on January 12, 2021 that he needed to have a closer look at the unit, there were several deficiencies, and he would have a full list the next day. He then had a closer look at the unit. The landlord stated there was "grease and dust everywhere" which was not apparent at first. His request was reasonable that the tenant properly clean the unit.

The landlord submitted a copy of a cleaning receipt dated January 25, 2021 for \$236.25. The job is described as "Deep Cleaning" of the unit. The number of hours is not recorded, nor are the specifics of the cleaning that was done.

The landlord requested an award as follows:

ITEM	AMOUNT
Reimbursement Invoice Cleaning	\$236.25
Reimbursement filing fee	\$100.00
TOTAL CLAIM - DAMAGES	\$336.25

The landlord testified that he took photos on January 13, 2021 after the tenant left. Copies of these photos were submitted. Several are enlarged. The photos show an imperfectly cleaned fridge, some spots on walls and doors, dust on shelves, and stained grout. "Before and after" photos were submitted.

The landlord completed the condition inspection report without the tenant present and submitted a copy which he testified accurately reflected the condition of the unit.

The landlord submitted a copy of the statement of his agent MG stating that the unit "had not been properly cleaned" when she viewed it on January 13, 2021 after the tenant left. MG stated that the condition inspection report on moving out (unsigned by tenant) was accurate.

The tenant testified as follows. The unit had not been properly cleaned when he moved in and some of the items which needed cleaning when he moved out, such as the exhaust fan, were in the same condition as when he moved in. He testified he left the unit generally in better condition than when he moved in. He also submitted many photos of the unit taken at the end of the tenancy which he testified show the unit was "reasonably clean".

The landlord requested an award for cleaning and authorization to apply the security deposit to the award as follows:

ITEM	AMOUNT
Award (above)	\$336.25
(Less security deposit)	(\$1,000.00)
Balance Security Deposit – To be Returned to Tenant	(\$663.75)

The tenant requested the return of the security deposit.

Analysis

Each party submitted substantial conflicting evidence. Only relevant, admissible evidence is considered. Only key facts and findings are referenced.

Standard of Proof

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedures* state that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

It is up to the landlord to establish their claims on a balance of probabilities, that is, that the claims are more likely than not to be true.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

Obligations of Tenants and Landlords

The obligations of the parties are set out in the Act and clarified in *Policy Guideline # 1. Landlord & Tenant – Responsibility for Residential Premises*.

Section 32 states as follows (emphasis added):

Landlord and tenant obligations to repair and maintain

32 (1) ...

(2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

(3) *A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.*

(4) *A tenant is not required to make repairs for **reasonable wear and tear**.*

Section 37(2)(a) of the Act states that when tenants vacate a rental unit, the tenants must leave it **reasonably clean** and undamaged except for reasonable wear and tear. The section states (emphasis added):

(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.

Credibility

When the tenant and the landlord give differing versions of events, the credibility of the parties must be considered. I found both parties to be well-prepared, articulate, and firmly convinced of their point of view.

Each party has supported their version of events with substantial evidence. Each party submitted many photographs in support of their testimony. Both the landlord and tenant submitted a written statement. The landlord submitted a witness' statement.

I accept the tenant's testimony that the tenant cleaned the unit before he left and *believed* that it was "reasonably clean". I also accept his testimony that he agreed to clean the floor one more time although, again, he believed it was adequately clean. I find the tenant was credible and sincere. I find he has created doubt about the landlord's claims. I find the tenant has provided a reasonable and believable version of events.

I also accept the tenant's testimony that the landlord complained about only one aspect of the cleaning – the floor – when they met for the condition inspection on January 12, 2021. I accept the tenant's testimony that he understood that if he cleaned the floor again, he would get his security deposit back.

Four-part Test

When an applicant, the landlord in this case, seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before

compensation may be awarded:

1. Has the tenant failed to comply with the Act, regulations, or the tenancy agreement?
2. If yes, did the loss or damage result from the non-compliance?
3. Has the landlord proven the amount or value of their damage or loss?
4. Has the landlord done whatever is reasonable to minimize the damage or loss?

Failure to prove one of the above points means the claim fails.

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

...

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The landlord must meet the burden of proof with respect to each claim.

Landlord's Claim for Cleaning

Each of the tests are addressed below.

1. Did the tenant fail to comply with Act, regulations, or tenancy agreement?

Under section 37(2) of the Act, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.*

In hearing the testimony of the parties, I find the tenant failed in the tenant's obligation under section 37(2) with respect to cleaning. I find the tenant did not clean the unit to the standard required by the Act. I accept the evidence of the landlord's photos that some cleaning was necessary in addition to the floors.

I have considered the testimony and receipt submitted by the landlord; I find the landlord has met the burden of proof that the tenant failed to comply with their obligation under section 37(2) to leave the unit "reasonably clean".

2. Did the loss or damage result from non-compliance?

Having found that the tenant failed to comply with the Act and the tenancy agreement, I must next determine whether the landlord's loss resulted from that breach.

This is known as cause-in-fact, and which focusses on the factual issue of the sufficiency of the connection between the respondent's wrongful act and the applicant's loss. It is this connection that justifies the imposition of responsibility on the negligent respondent.

The conventional test to determine cause-in-fact is the *but for* test: would the applicant's loss or damage have occurred *but for* the respondent's negligence or breach?

If the answer is "no," the respondent's breach of the Act is a cause-in-fact of the loss or damage.

If the answer is "yes," indicating that the loss or damage would have occurred whether the respondent was negligent, their negligence is not a cause-in-fact.

Under section 37(2) of the *Act*, the tenant must *leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

In hearing the testimony of the landlord, supported by the receipt, I find the tenant failed in the tenant's obligation under section 37(2) and the Guideline with respect to cleaning.

I find that the landlord would not have incurred a cleaning expense but for the tenant's breach of their obligations. I accept the landlord's evidence that he incurred the cleaning expense for which he submitted an invoice.

3. Has applicant proven amount or value of damage or loss?

RTB Guideline # 1 – Responsibility for Premises states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard.

I accept the testimony of the tenant that the unit needed some cleaning when he vacated although he believed the unit was "reasonably clean".

I find the landlord carried out a "deep clean" (the phrase in the cleaning invoice). While no evidence was submitted as to the definition of a "deep clean", I find that the normal usage of the term is a more complete cleaning which may include disinfecting. I find the time and cost on the submitted invoice to be excessive given the facts as I understand them. I find the level of cleanliness likely achieved was greater than the standard of "reasonably clean" set out in the Act.

I therefore find the landlord has not met the burden of proof with respect to the amount of cleaning and cost and find the cost claimed was not necessary to bring the unit to a state of being "reasonably clean".

4. Has applicant done whatever is reasonable to minimize damage or loss?

Considering all the evidence, including the acknowledgement of some responsibility by the tenant, I find the landlord has met the burden of proof on a balance of probabilities that the unit required some cleaning at the end of the tenancy.

However, I find the landlord has not met the burden of proof as to the monetary value of the cleaning necessary. I find the amount of the invoice to be excessive and unjustified by the level of uncleanness I observed in the photographs and evidence.

In considering the landlord's testimony, I find that they took the unnecessary step of having a "deep clean" of the unit. I find the situation called for a less extensive cleaning.

I therefore find the landlord failed to take reasonable steps to minimize the cleaning expense and the tenant is not responsible for the full amount of the claim.

Conclusion

I considered *Policy Guideline 16: Compensation for Damage or Loss* which states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

Nominal damages....

I find the landlord has failed to meet the burden of proof with respect to the amount of the claim for cleaning although I find some additional cleaning was needed. I find that a nominal award of \$50.00 to be reasonable in the circumstances and to amount to compensation adequate to bring the unit to being “reasonably clean”.

I accordingly grant the landlord a monetary award in the amount of \$50.00 under this heading.

Filing fee

As the landlord has been somewhat successful in the claim, I award reimbursement of a portion of the filing fee which I set at \$25.00.

Award

My award to the landlord is summarized as follows:

ITEM	AMOUNT
Reimbursement Invoice Cleaning	\$50.00
Reimbursement filing fee	\$25.00
TOTAL AWARD LANDLORD	\$75.00

Security deposit

I authorize the landlord to retain the award from the security deposit held in trust. I direct the landlord to return the balance of the security deposit to the tenant. I accordingly grant the tenant a Monetary Order for the return of the security deposit in the amount of

\$925.00.

ITEM	AMOUNT
Award (above)	\$75.00
(Less security deposit)	(\$1,000.00)
Balance Security Deposit – To be Returned to Tenant	(\$925.00)

Conclusion

I grant the tenant a Monetary Order in the amount of \$925.00. This Order must be served on the landlord. This Order may be filed in the Courts of the Province of British Columbia and enforced as an Order of that Court.

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: August 21, 2021

Residential Tenancy Branch