



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 12, 2021 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 23, 2021 was sent to each Tenant, via registered mail, at the forwarding address provided by the female Tenant. The Landlord submitted a Canada Post receipt that corroborates this statement.

The female Tenant stated that she received the aforementioned documents from the Landlord, but she does not know if the male Tenant received them.

In the absence of evidence to the contrary, I find that these documents have been served to both Tenants in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the male Tenant did not appear at the hearing. As the documents were properly served to the both Tenants, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the male Tenant.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on September 01, 2019;
- the tenancy ended on January 31, 2021;
- the Tenants paid a security deposit of \$700.00, which is still retained by the Landlord;
- the female Tenant provided the Landlord with a forwarding address, by mail, on March 10, 2021; and
- the male Tenant provided the Landlord with a forwarding address, by text message on July 09, 2021.

The Landlord is seeking compensation, in the amount of \$220.50, for cleaning the rental unit. The Landlord submitted photographs, which the Landlord stated were taken at the end of the tenancy, which show the rental unit required cleaning. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The female Tenant stated that she thoroughly cleaned the rental unit approximately one week prior to the end of the tenancy; she did not return to the rental unit during the last week of the tenancy; the male Tenant continued to live in the unit during the last week of the tenancy; and she does not think the male Tenant could have made a significant mess during the last week of the tenancy.

The Landlord is seeking compensation, in the amount of \$275.00 + GST, for cleaning the carpet. The Landlord stated that the carpet needed to be cleaned because pop had been spilled on the carpet in the living room. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The female Tenant agreed that pop had been spilled in the living room and that the carpet was not cleaned by the Tenants during the tenancy, with the exception of vacuuming. She thinks the cost of cleaning the carpet is excessive.

The Landlord is seeking compensation, in the amount of \$165.00 + GST, for repairing an exterior faucet. The Landlord submitted a photograph of the faucet, which is clearly bent. The Landlord stated that the faucet is located near where the female Tenant stored her scooter and he speculates it was damaged by the scooter during the tenancy. The Landlord submitted an invoice to show that the Landlord incurred this expense.

The female Tenant stated that she did not ever use the faucet; she does not know if it was damaged prior to the tenancy; she does not recall hitting it with her scooter; and she does not know if it was damaged during the tenancy.

The Landlord is seeking compensation, in the amount of \$85.00 + GST, for repainting the exterior wall which were marked by the tires of the female Tenant's scooter. The Landlord submitted photographs of the tire marks.

The female Tenant stated that the tire marks caused by her scooter could easily be wiped off and that the area did not require repainting.

The Landlord is seeking compensation, in the amount of \$105.00 + GST, for repairing fascia board on a post. The Landlord and the female Tenant agree that the female Tenant hit the post with her car. The Landlord submitted a photograph that shows a small portion of the board is missing. The Landlord submitted an invoice to show that the Landlord incurred this expense.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 37(2) of the *Act* stipulates that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and 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.

On the basis of the testimony of the Landlord, I find that the photographs submitted in evidence fairly represent the condition of the rental unit at the end of the tenancy.

On the basis of the testimony of the Landlord and the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the rental unit, which was \$220.50.

On the basis of the undisputed testimony that pop had been spilled on the carpet during the tenancy, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to clean the carpet. I therefore find that the Landlord is entitled to compensation for the cost of cleaning the carpet, which was \$275.00 + GST (\$290.12). Although the female Tenant contends that this amount is excessive, she submitted no proof to corroborate that submission. The claim for cleaning the carpet is not significantly higher than similar claims I have considered.

On the basis of the photograph submitted in evidence and the testimony of the Landlord, I find that an exterior faucet was damaged at the end of the tenancy. On the basis of the condition inspection report submitted in evidence, which was signed by the parties at the start of the tenancy, I find it reasonable to conclude that the faucet was not damaged at the start of the tenancy, as there is no mention of such damage on the report. I therefore must conclude that the damage occurred during the tenancy.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the exterior faucet and that the Landlord is entitled to compensation for the cost of repairing the faucet, which was \$165.00 + GST (\$173.25).

On the basis of the undisputed testimony, I find that the female Tenant's scooter marked the exterior of the rental unit. After viewing the photograph of the marks, I find that the damage should be considered reasonable wear and tear, as it is quite minor. I dismiss the Landlord's claim for compensation for this damage, as tenants are not obligated to repair damage that is considered reasonable wear and tear.

On the basis of the photograph submitted in evidence and the testimony of both parties, I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to repair the fascia board that was damaged when the female Tenant hit a post with her car. I therefore find that the Landlord is entitled to compensation for the cost of repairing the board, which was \$105.00 + GST (\$110.25). As this damage occurred as the result of being struck by a vehicle and a portion of the board is missing, I find that this damage exceeds wear and tear.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

As this tenancy ended on January 31, 2021 and the female Tenant mailed her forwarding address to the Landlord on March 10, 2021, I find that the Landlord had until March 25, 2021 to either repay the security deposit of \$700.00 or to file an Application for Dispute Resolution claiming against it.

Residential Tenancy Branch records show that the Landlord filed this Application for Dispute Resolution on June 15, 2021. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid the security deposit and he did not file this Application for Dispute Resolution until June 15, 2021.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenants double their security deposit of \$700.00, which is \$1,400.00.

Conclusion

The Landlord has established a monetary claim, in the amount of \$894.12, which includes \$220.50 for cleaning; \$290.12 for cleaning the carpet; \$110.25 for repairing fascia board; \$173.25 for repairing an exterior faucet; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution.

I have determined that the Tenants are entitled to the return of double their security deposit, which is \$1,400.00.

After offsetting these amounts, I find that the Landlord owes the Tenant \$505.88 and I grant the Tenants a monetary Order for that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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 *Act*.

Dated: January 08, 2022

Residential Tenancy Branch