



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Page: 1

A matter regarding 1305303 LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL, MNSDB-DR

Introduction

The landlord seeks compensation against their former tenant for unpaid rent, for cleaning costs, and for the cost of the filing fee. The landlord seeks to retain the tenant's security and pet damage deposits if awarded compensation.

By way of cross application, the tenant seeks the return (and doubling) of their security and pet damage deposits (hereafter the "deposits"), along with additional compensation for the loss of a propane tank and bookshelf.

An arbitration hearing was held on June 7, 2022 and a representative for the landlord (hereafter the "landlord") and the tenant attended.

The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the Residential Tenancy Branch's *Rules of Procedure* was explained to the parties.

It should be noted that the tenant received the landlord's documentary evidence but not copies of several photographs that have been submitted. The landlord testified that they served their evidence on the tenant by registered mail but was unable to explain how the photographs did not make it into that package. The onus is on the serving party to prove that their documents were served. In this case I am unable to find that the landlord served copies of their photographs on the tenant and as such the photographic evidence is inadmissible.

Issues

1. Is the landlord entitled to compensation?
2. Is the tenant entitled to the return of their deposits?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began October 1, 2020 and ended September 30, 2021. Monthly rent was \$2,123.00. The tenant paid a \$1,061.50 security deposit and a \$1061.50 pet damage deposit. The landlord holds the deposits in trust pending the outcome of the landlord's application. A copy of the written tenancy agreement was submitted into evidence.

The landlord seeks \$1,706.00 in compensation for partial unpaid rent from September 2021. The landlord testified that as per the account statement (submitted into evidence) only partial rent payment was made.

In addition, landlord seeks \$472.50 for cleaning costs of the rental unit. The landlord testified that the tenant left the rental unit uncleaned and "dusty everywhere." A few items were also left in the rental unit. A cleaning company was hired, and they removed those items. An invoice for the cleaning company was submitted into evidence.

The landlord testified that the tenant was not present when she completed the condition inspection report. She explained that the landlord was following COVID protocols and signed the report without the tenant present.

The tenant testified that he is seeking the return and doubling of the security and pet damage deposits. He testified and confirmed that he provided his forwarding address to the landlord on October 1, 2021 by email. A copy of this email to the landlord was in evidence. The tenant referred me to a section of the tenancy agreement which speaks to the return of a tenant's deposit within 15 days of vacating a rental unit.

Further, the tenant is seeking \$78.00 in compensation for a propane tank that was thrown out by the landlord, and \$99.00 in compensation for an IKEA bookcase which was also thrown out. The tenant testified that he was not given any chance to retrieve the propane tank or bookcase, though he did return the keys without going into the rental unit to retrieve these items. No receipts for either item was in evidence.

In respect of the unpaid rent, the tenant testified that he was unaware of any amounts owing and that "no one ever told [him]" about the outstanding amount.

As for the cleaning claim, the tenant testified that he cleaned and swept but perhaps forgot to clean down the countertops. He admitted that it was a very long day, but that the claim is certainly not worth \$500.

The tenant testified that he contacted the landlord to arrange for a move out inspection. The landlord responded by saying that she was unavailable and that the tenant could just leave the key under the door; the landlord stated that she would simply do the inspection later. According to the tenant, the landlord never invited him for any further inspection or alternate time to attend. It was not until October 7 or 8 that the landlord sent the tenant a copy of the report and asked him to sign it. Ultimately, the landlord advised that they would simply keep the deposits without further explanation.

Analysis

1. The Landlord's Application

Unpaid Rent

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement unless the tenant has a right under the Act to deduct all or a portion of the rent.

In this case, while the tenant testified that he was unaware of any amounts owing, the landlord's account statement clearly shows that there was an amount of \$1,706.00 owing. Taking into consideration all the evidence before me, it is my finding that the landlord has proven, on a balance of probabilities, that they are entitled to \$1,706.00 in compensation for unpaid rent.

Cleaning Claim

Section 37(2)(a) of the Act requires that a tenant "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear" when they vacate. There is, as noted, no photographic evidence of the rental unit. The only documentary evidence provided was a condition inspection report.

Section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 ("Regulation") states that

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.

In other words, a condition inspection report completed *in accordance with this Part* is, in most cases, sufficient to prove that a tenant breached section 37(2)(a) of the Act. However, “Part 3 – Condition Inspections” of the Regulation requires that a “landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.” No such offer was made by the landlord in this case. Indeed, it was the tenant who reached out to find a time, and the landlord simply responded by saying that they were unavailable and that they would do the inspection themselves. The landlord testified that the inspection was conducted without the tenant due to COVID protocols.

It is my finding that the landlord did not complete the condition inspection report in accordance with either this Part of the Regulation, or in compliance with section 35 of the Act. As such, the condition inspection report cannot be accepted or considered as evidence of the state of repair or condition of the rental unit, for the purposes of section 21 of the Regulation.

For these reasons, I am not persuaded on a balance of probabilities that the tenant breached subsection 37(2)(a) of the Act and thus no compensation may flow. The landlord’s claim for cleaning costs is hereby dismissed without leave to reapply.

Application Filing Fee

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. When an applicant is successful, the respondent is ordered to pay an amount equivalent to the applicant’s filing fee. In this dispute, as the landlord was successful in one of its two claims, they are awarded \$50.00 to partly cover the cost of the filing fee.

2. The Tenant’s Application

Return (and Doubling) of Security and Pet Damage Deposits

Section 38(1) of the Act states that

Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

In this dispute, the landlord received the tenant's forwarding address in writing on October 1, 2021. The landlord's application for dispute resolution was received by the Residential Tenancy Branch on October 15, 2021 (and not, as the tenant incorrectly noted, on October 20). As such, it is my finding that the landlord made an application for dispute resolution within the required 15 days and is not liable to pay a doubled amount under [subsection 38\(6\)](#) of the Act.

However, as the landlord is awarded \$1,756.00 and is ordered to retain this amount in full satisfaction of the amount awarded, the balance of the security and pet damage deposits must be returned to the tenant. The balance which must be returned to the tenant is \$367.00.

Claim for Propane Tank and Bookshelf

The tenant claims compensation for a propane tank and an IKEA bookshelf that were thrown out by the landlord's cleaning company.

Section 7 of the Act requires an applicant who is claiming compensation to do whatever is reasonable to minimize their loss.

I am not satisfied based on the tenant's testimony that he made reasonable efforts to return to the rental unit to remove these personal items. He had the keys to the rental unit but instead of removing the tank and bookshelf, he simply returned the keys. With respect, I am not persuaded that the tenant "had no opportunity" to retrieve these items. As such, I find that the tenant did not do whatever was reasonable to minimize the loss of these items and on this basis decline to grant the tenant's claim.

Conclusion

The landlord's application is granted, in part. The tenant is ordered, pursuant to sections 67 and 72 of the Act to pay to the landlord \$1,756.00. However, pursuant to section 38(4)(b) of the Act the landlord is authorized to retain this amount from the tenant's deposits in full satisfaction of the award.

The tenant's application is granted, in part. The landlord is ordered, pursuant to section 67 of the Act, to pay to the tenant \$367.00. This amount must be paid within 15 days of the landlord receiving a copy of this decision. (A monetary order is issued in conjunction with this decision to the tenant.)

This decision is final and binding on the parties, and it is made on delegated authority under section 9.1(1) of the Act. A party's right to appeal this decision is limited to grounds provided under section 79 of the Act or by way of an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: June 7, 2022

Residential Tenancy Branch