



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on December 9, 2021 seeking compensation for damages to the rental unit, unpaid rent, and reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 12, 2022.

Both the Landlord and the Tenant attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. The Tenant confirmed they received the Notice of this hearing from the Landlord, and the Landlord’s prepared evidence. The Tenant did not prepare evidence in advance and relied on their testimony in the hearing.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to compensation for damage to the rental unit, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement and both parties in the hearing confirmed the basic details. The tenancy started on May 1, 2021. The rent amount of \$1,700 did not increase during the tenancy. The Tenant paid a security deposit of \$850 and a pet damage deposit of \$850.

The Landlord queried the Tenant on the late payment of rent at the beginning of November 2021. This is shown in the Landlord's evidence in their email to the Tenant on November 3, 2021. The Landlord responded later in the evening and gave the indication that they would move into the rental unit. They stated this was "two months' notice" and instructed the Tenant to "Please vacate the property on December 31."

In the hearing, the Tenant described needing to live in a rental unit with more stability in terms of tentatively being evicted due to late rent payments – they had a different impression about this based on their recollection of what the Landlord said regarding timeliness of payments at the start of the tenancy. They notified the Landlord of this on the morning of November 5, indicating they would vacate the rental unit by December 1st.

The Landlord submits they effectively withdrew their notification to the Tenant that the tenancy would need to end for their own use of the rental unit. Their evidence on this is the message to the Tenant on November 4 where they asked the Tenant to "Please disregard the attached email notice . . ." The following day, they inquired again on the payment of November rent.

On November 11, the responded to say they were in the process of moving. In regard to the November rent, they provided: "In terms of rent, you gave me notice so you can move in, I am entitled to one free month."

The Tenant did not pay rent prior to their move out from the rental unit on December 1. The Landlord claims the full amount of November rent, for \$1,700.

The Landlord and Tenant did meet in the rental unit to inspect its condition. The Landlord submitted a copy of the Condition Inspection Report, jointly signed by each party on that day. The Landlord retained \$600 from the deposits total, with the Tenant's agreement. This was \$200 for an extant BC Hydro bill, and \$400 for agreed-upon

cleaning. The Report noted damage on the walls and the need for carpet cleaning. The Landlord returned the balance to the Tenant on December 6.

In their written summary, the Landlord described the new tenant moving in, and then raising an issue with remaining pet hair on the second-floor rug. In the hearing the Landlord described that this posed a large problem for the new tenant who had family members that would be affected by that hair. This new tenant moved in on December 7, the temporarily left to allow the Landlord more time to clean the carpets thoroughly. The Landlord described that cleaner finding “finer hairs” that required the use of a special vacuum, more of a specialized type of allergy cleaning that they do.

The Landlord presented their receipt for this carpet cleaning that took place on December 8, 2021. This shows the amount of \$237.35 that the Landlord claims as compensation for damage to the rental unit.

In the hearing, the Tenant maintained that they did a thorough deep clean before they moved on. The agreed-upon amount was \$400 for covering incidental cleaning of the carpet and wall damage.

Analysis

The *Act* provides that a tenant is entitled to receive an amount that is the equivalent of one month’s rent payable under the tenancy agreement. A tenant may withhold that amount from the last month’s rent, thus “deemed to have been paid to the landlord” (s. 51(1.1)). This is when they receive a notice from a landlord, ending the tenancy for the landlord’s own use of the rental unit. This is a two-month notice to end tenancy, issued as per s. 49 of the *Act*.

Here, I find the Tenant did not receive a two-month notice to end tenancy from the Landlord. The Landlord referred to “two months’ notice” and specified a date of December 31; however, this was not a legally valid to end the tenancy and there were no legal benefits conferred. A tenant’s entitlement to the equivalent of one month’s rent is conferred by the *Act* *only* when a landlord issues a s. 49 Notice to End the Tenancy, and the Landlord did not do that here.

Further, the Tenant essentially withheld rent on the basis of November being the final month of the tenancy; however, that was not in place prior to November 1st. I find

nothing ended the Tenant's obligation to pay rent for November 2021. I grant the Landlord the amount of November rent in full, for \$1,700.

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys and other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide enough evidence to establish the following four points:

- That a damage or loss exists;
- That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
- The value of the damage or loss; **and**
- Steps taken, if any, to mitigate the damage or loss.

I find as fact that the Landlord and Tenant reviewed the condition of the rental unit together and agreed upon an amount owing; this includes a concession for carpets. Whether the Landlord undertook carpet cleaning after that, and prior to the new tenant moving in, is unknown. I find the amount agreed upon covered the obligation of the Tenant for that specific piece of cleaning. The Tenant's obligation on that point ended upon that agreement with the Landlord.

With the amount of \$400 agreed upon, that in effect left the unit undamaged and reasonably clean with respect to the Tenant's obligation. I find the extra cleaning here does not result from any violation of the *Act* or tenancy agreement by the Tenant, with the Tenant's obligation already fulfilled at that point. For this reason, I dismiss this piece of the Landlord's claim.

In total I find the Landlord has established a claim of \$1,700. Because the Landlord was moderately successful in their Application, I grant the amount of \$50 to them as partial reimbursement for the Application filing fee.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,750 for compensation set out above. I provide them this Monetary Order in the above terms, and they must serve the Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with the Monetary Order, the Landlord may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: July 12, 2022

Residential Tenancy Branch