



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: MNDL-S FFL

Introduction

The landlord seeks compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act"). A dispute resolution hearing was convened on Thursday, August 18, 2022 at 1:30 PM. In attendance were a representative for the landlord, and the tenant. The parties were affirmed, and no service issues were raised.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began October 1, 2020 and ended November 30, 2021. Monthly rent was \$2,700.00 and the tenant paid a \$1,350.00 security deposit. The landlord holds the security deposit in trust pending the outcome of this application. There was a copy of the written tenancy agreement in evidence.

In this application the landlord seeks \$952.00 to pay for replacing a damaged carpet, \$169.89 to pay for changing the locks, and \$100.00 for the Residential Tenancy Branch's application filing fee. A monetary order worksheet was in evidence, as well as photographs of the damaged carpet, receipts and invoices for the carpet and lock expenditures, and a copy of a completed condition inspection report.

The landlord's agent testified that, as indicated in the condition inspection report, which was completed on November 29, 2021, the carpet in the bedroom of the rental unit had a deep stain. The landlord made inquiries of some companies who responded that, because the stain was so deep, the carpet needed to be replaced. Estimates to replace the carpet were sent to the tenant in January 2022, but efforts to resolve the situation did not bear fruit. Ultimately, the landlord installed the replacement carpet in April.

It should be noted that the townhouse was newly built “four or five years ago” according to the landlord. The tenant stated that the building was constructed in 2014; the landlord did not dispute this comment made by the tenant. Thus, the carpet would have been about 7 years go at the time the tenancy ended.

Regarding the claim for replacing the locks, the landlord gave evidence that all of the keys had not been returned at the time the tenancy ended and as such they had to install two new locks. The tenant did not dispute the claim for replacing the locks.

In response, the tenant testified that while the carpet was stained (from one of his daughters having spilled coffee), he disputed the amount. He explained that the initial estimate sent to him by the landlord was for \$850. This, however, was an estimate for not one but two stains, including a stain on a stairwell carpet; this carpet stain is not part of this dispute. Thus, the tenant expected that the final amount for just one carpet would be half. He also argues that it is not fair for him to have to pay for a new replacement carpet that others have previously used, and for which future tenants will use.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss. Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine whether a party is entitled to compensation, there is a four-part test which must be met, and which is based on the above sections of the Act: (1) Was there a breach of the Act, the tenancy agreement, or the regulations by the respondent? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant do whatever was reasonable in minimizing their loss?

Section 37(2) of the Act states that

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.

In this dispute, the landlord claims that the tenant damaged the carpet and did not return one of the keys. The condition inspection report is evidence of the state of repair and condition of the rental unit, including the absence of a key, on the date of the inspection, and the tenant has not provided a preponderance of evidence to the contrary (see section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 234/2006). Therefore, it is my finding that the tenant breached section 37(2) of the Act. But for the tenant's breach of the Act the landlord would not have had to pay to replace the carpet nor pay to obtain a new key.

Further, it is my finding that the landlord has proven the cost of expenses related to the carpet and the key. While the tenant has provided alternative options in respect of cheaper cleaning, I am unable to find that the amounts the landlord seeks is unreasonable. Nor do I have sufficient evidence to find that the landlord did not take reasonable efforts to minimize its loss in respect of these claims. It should be noted that the tenant damaged the carpet by staining it in January 2022, but he took no action to repair the damage. In other words, the tenant had ample opportunity to have the carpet cleaned—if indeed that was even possible—but chose not to.

Taking into consideration all of the oral and documentary evidence before me, it is my finding that the landlord has proven on a balance of probabilities that they entitled to their claim for compensation.

Regarding the carpet, it is necessary for me to apply depreciation to the cost to replace the carpet. This is because all building elements have a useful life, and replacing such elements cannot be at full, as-new cost. [*Residential Tenancy Policy Guideline 40 "Useful Life of Building Elements"*](#) (version March 2012) on page 5 indicates that carpets have a useful life of ten years. In this case, the rental unit's carpet being replaced was seven years old at the time the tenancy ended. As such, an amount equivalent to 70% in depreciation must be applied to the \$952.00 for a reduced amount of \$285.60.

Last, regarding the landlord's claim to recover the cost of the application filing fee, section 72 of the Act permits an arbitrator to order payment of a fee by one party to another. Normally, when an applicant is successful in their application, the respondent is ordered to pay an amount equivalent to the applicant's filing fee. In this dispute, because the landlord was successful the tenant is ordered pay the landlord \$100.00.

In total, the landlord is awarded \$555.49 in compensation.

Section 38(4)(b) of the Act permits an arbitrator to authorize a landlord to retain a tenant's security deposit after the end of a tenancy. As such, the landlord is ordered and authorized to retain \$555.49 of the tenant's security deposit in full satisfaction of the amount awarded.

The balance of the security deposit (\$794.51) must be returned to the tenant within 15 days of the landlord receiving this decision. A copy of a monetary order is issued in conjunction with this decision, to the tenant.

Conclusion

IT IS HEREBY ORDERED THAT:

1. the application be granted, in part.
2. the landlord be awarded \$555.49 and retain this amount from the security deposit.
3. the landlord returns to the tenant the balance of the security deposit in the amount of \$794.51 within 15 days of receiving this Decision.

This decision is final and binding, 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 an application for judicial review under the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

Dated: August 18, 2022

Residential Tenancy Branch