



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking a monetary order for damage to the rental unit or property; a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order permitting the landlord to keep the security deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, and the tenants were assisted by Legal Counsel. The landlord and one of the tenants gave affirmed testimony, and the parties (or their Legal Counsel) were given the opportunity to question each other and to give submissions.

During the course of the hearing the landlord indicated that the tenants' evidentiary material was delivered late and should not be considered. Legal Counsel for the tenants submitted that the evidence was delivered to the landlord on September 12, 2022 and was signed for. The hearing was originally scheduled for September 12, 2022, however it was adjourned to September 21, 2022 at the request of the tenants' Legal Counsel, and the Arbitrator said to email the evidence and the landlord agreed. The parties then received a Notice of Dispute Resolution Proceeding which re-scheduled the hearing to September 22, 2022.

The Residential Tenancy Branch Rules of Procedure require that:

Rule 3.15 - The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited

hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The record shows that the hearing was adjourned on September 12, 2022 to September 21, 2022, and the Interim Decision of the Arbitrator is dated September 13, 2022. It states that:

As discussed during this hearing, the Tenants or their counsel will provide copies of the Tenants' evidence (those which have already been submitted to the Residential Tenancy Branch) to the Landlord via email by 5:00 pm on Tuesday, September 13, 2022. Except as noted above, neither party may submit any further documentary or digital evidence for the reconvened hearing. If a party wishes to rely on written submissions or a written outline for the reconvened hearing, copies must be provided to the Residential Tenancy Branch and to the other party on or before Monday, September 19, 2022.

I find that the tenants have complied, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for excess utilities?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2020 and reverted to a month-to-month tenancy after November 30, 2021, which ultimately ended at the end of January, 2022. Rent in the amount of \$1,550.00 was payable on the last day of each month for the following month. On November 5, 2020 the landlord collected a security deposit from the tenants in the amount of \$775.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlord.

The rental unit is an above ground basement suite and the landlord resides in the upper level of the home.

A copy of the tenancy agreement has been provided by the landlord for this hearing, which was amended on July 12, 2021 specifying an additional rental amount of \$350.00 for an additional occupant and \$50.00 for additional utilities, bringing rent to \$1,950.00 including utilities commencing August, 2021.

The landlord further testified that a move-in condition inspection report was completed at the beginning of the tenancy, and a move-out condition inspection report was completed at the end of the tenancy, and a copy has been provided for this hearing. The tenants were present when the move-out condition inspection report was completed. Once the landlord received the tenants' forwarding address in writing, which was received on February 15, 2022, the landlord sent a copy of the move-out condition inspection report to the tenants.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totalling \$1,282.31:

- \$124.46 for replacement of 2 element burners on the stove, a door stopper, a light dimmer switch and faucet aerator;
- \$24.59 for a drain auger to unclog the bathtub drain;
- \$75.00 for cleaning grout in the bathroom tile wall, baseboards and window sills;
- \$168.00 for carpet cleaning to remove stains;
- \$728.00 for painting the living room, kitchen, bedroom and door trims; and
- \$162.26 for excess utilities in January, 2022.

Receipts and photographs have also been provided for this hearing, which the landlord testified were taken the same day as the move-out condition inspection. The landlord testified that the landlord took the burners out of the stove; the tenants took the door stopper out so it had to be replaced; the dimmer switch was working when the tenants moved in but was broken by the tenants; and the aerator was new when the tenants moved in and is supposed to spray but doesn't work anymore. The stove was about 10 years old, and the elements could not be put back together.

The bathtub was pugged and the landlord had to buy an auger to pull out hair and stuff. Also, the tenants didn't clean the rental unit at the end of the tenancy, leaving stains on the baseboard, and the landlord spent a couple of hours cleaning. The landlord had to use a grout cleaner, and cleaning materials were about \$25.00.

The stains remain in the carpet after the landlord had it professionally cleaned, but the stains were not there at the beginning of the tenancy. The tenants had them cleaned at the end of the tenancy, but the landlord had the cleaner return because after he left, the landlord found 2 stains. The carpet cleaner said there was nothing wrong and was not willing to do it again so the landlord had to get someone else to clean them. The stains were removed and new tenants moved in, and their move-in condition inspection report indicates that the carpets were clean. The carpets are 7 years old at the commencement of this tenancy.

At the beginning of the tenancy the tenants had sent a text message to the landlord indicating that there was a strong smell from the carpet which was very noticeable and the landlord replied that the landlord would get someone to return to have it cleaned again. The tenants were happy with that and asked for the same guy to come back at the end of the tenancy because he was good, but the landlord was not able to find his number. The tenants had a very large grey carpet in the living room which entirely covered the area.

The tenants left a big gouge on a wall and scrape marks in one of the bedrooms, which are not wear and tear. The 2 bedrooms, kitchen and living room were last painted 3 years ago, or in 2019.

The landlord also testified that the previous utility bill in December, 2021 was \$311.68 and the tenants paid half by consent. Based on 6 people living there, the January, 2022 bill of \$324.52, the tenants should pay half. There are 2 rental units downstairs, and there are 3 people living in this rental unit and 2 people on the other side. Including the landlord, there are 6 people living in the building. The bills are divided by the number of occupants in the building.

The tenant (KE) testified that on December 1, 2020 the tenants were to move in, but previous tenants were there until 1:30. The move-in condition inspection report was completed while the belongings of the previous tenants was being removed. Also, some items were left behind, such as a toilet brush, and stuff outside that smelled really bad. The aerator on the kitchen sink was there for the previous tenants. Also, carpets were really dirty and when the inspection report was done, the landlord told the tenants to sign it. The report was only filled out by the landlord and when the tenant said to note certain things, the landlord said he would and to not worry about it.

When the tenants moved in the carpets were not wet and the tenants had carpet cleaners arrive after the tenants moved their furniture in. The black ring around the carpet was not removed and the cleaner said they would stay; the same black ring was

around all of the carpets at move in and at move out; no one seemed to be able to get rid of it. The tenants put a large rug in the living room over the carpet, and any stains caused by the tenants would have been on the tenants' carpet. The landlord didn't give the tenants a number of the landlord's carpet cleaner in time so the tenants arranged for another carpet cleaning company. The fellow who cleaned it said that the landlord was yelling at him, swearing and demanded that the fellow return. January 29 was the first cleaning, but the tenants couldn't confirm that the cleaning was done because the landlord texted the tenants on January 29, 2022 at 4:42 p.m. saying that the landlord had the locks changed, but the tenancy wasn't supposed to end until January 31, 2022 at 1:00 p.m. A copy of the carpet cleaning invoice has been provided by the tenants for this hearing.

The tenants moved out on January 15 because the landlord continued to harass the tenants. The tenants started moving out in mid-December, and all furniture was out by the end of December. The tenants were attending between December and January after work, and during that time were half occupying the rental unit.

The tenants asked the landlord to turn down the heat on December 6, 2021 because the landlord kept complaining about heat and the utilities.

On January 9, all the big stuff was moved out, such as beds, couch and tables. On January 12, 2022 the landlord said he'd turn off the heat during the weekend, but the tenants told the landlord to lock the thermostat in December. The thermostat was set at 22 degrees. The tenants paid additional utilities on top of the rent. The tenants also paid extra for utilities of \$400.00 in July; \$65.90 on November 12; and \$80.00 on December 6.

SUBMISSIONS OF THE LANDLORD:

The photographs show dates and were taken in the tenants' presence at move-out. There are inconsistencies of the tenants' evidence. There was no smell in the carpet but the landlord had a person to return at the tenant's request about a brown stain at the beginning of the tenancy and the tenants liked the job done. Everything was clean and professionally cleaned at move-in.

SUBMISSIONS OF THE TENANTS' LEGAL COUNSEL:

The tenants did not cause any damage, and there is no evidence that the tenants' pets caused damage. Both deposits should be returned. The claim is completely for reasonable wear and tear; the rental unit was used in a reasonable fashion and the tenants did nothing to damage carpets or walls. The landlord testified that the rental

unit was last painted 3 years prior to the tenancy, which would have been in 2018; and Residential Tenancy Policy Guideline #40 puts the useful life of interior paint at 4 years. The rental unit needed to be painted prior and the landlord is attempting to offload on the tenants. The before and after photographs show minimal difference. Stains existed on the carpets before and after, but the landlord has not provided any evidence that the stains ever came out after the landlord hired another cleaner.

Policy Guideline #1 speaks about walls, scuffmarks, and the tenants did what they were expected to do. The landlord is responsible for painting at reasonable intervals. None of the landlord's photographs show damage contemplated by the *Residential Tenancy Act* or the Policy Guidelines.

With respect to utilities, the tenants started moving out in mid-December and asked the landlord to lock the thermostat to decrease the cost until the end of January, so there is no liability on the tenants for January utility bills of \$324.52.

Analysis

Firstly, where a party makes a claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims \$1,282.31 for damages, cleaning, carpet cleaning and painting, as well as excess utilities in January, 2022.

The *Residential Tenancy Act* specifies that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports and photographs, which are not dated, as testified by the landlord. The landlord has provided evidence of the costs for the following claims, thereby satisfying element 3 in the test for damages:

- \$124.46 for replacement of 2 element burners on the stove, a door stopper, a light dimmer switch and faucet aerator; and
- \$24.59 for a drain auger to unclog the bathtub drain.

There are no markings on the move-in condition inspection report with respect to damages of any of those items, and I am satisfied that the landlord has established those claims.

I have also reviewed the condition inspection reports which are consistent with the claims above. However, the text messages also indicate that the landlord had the lock changed by January 29, 2022 but the tenancy didn't end until January 31, 2022. The texts also indicate that the landlord was advised that the carpet cleaner said that the stains were not removable. The landlord testified that the stains were removed after the tenants' carpet cleaning company was not able to remove them, but has not provided any evidence of that. The tenants were required to have the carpets cleaned, which they did and have provided evidence of that, and I am not satisfied that the landlord has established that any black ring or stains left in the carpets are a result of the tenants' failure to comply with the *Act* or the tenancy agreement. The landlord's claim for carpet cleaning to remove stains is dismissed.

With respect to the landlord's claim of \$75.00 for cleaning, the landlord changed the lock to the rental unit prior to the end of the tenancy, thereby failing to mitigate any damages, and I dismiss the claim.

With respect to painting, I agree with the submission of the tenants' Legal Counsel that the Policy Guideline indicates that the useful life of interior paint is 4 years. The landlord testified that the 2 bedrooms, kitchen and living room of the rental unit was last painted 3 years ago and that it would have been in 2019, but has not provided any evidence of that. The condition inspection report does not indicate that it was new paint at the beginning of the tenancy. The invoice for this claim is dated February 4, 2022 and states that the service was to paint bedrooms, hallway, living room and door trim. The inspection reports show that the walls and trim in the living room were good at the beginning and end of the tenancy. I have also reviewed the photographs and it's clear to me that the trim is normal wear and tear. Considering the evidence, I am not satisfied that the rental unit didn't need painting in any event, or that any damage was caused by the tenants' failure to comply with the *Act* or the tenancy agreement, and I dismiss the landlord's claim for painting.

With respect to utilities, I have reviewed the written agreements of the parties. I have also reviewed the text messages provided as evidence, and I accept the testimony of the tenant that the landlord was advised by text message in December and January that the heater could be turned off in the rental unit and the tenants were no longer occupying it, and that all lights were off. I'm not convinced in the evidence that the

landlord mitigated any excess utilities accordingly by turning off the heat to the rental unit.

The landlord has provided a copy of a gas bill for the period of December 30, 2021 to January 31, 2022 in the amount of \$324.52. It also shows that the previous bill was \$311.68; not a big difference. The landlord testified that the amendment to the tenancy agreement was signed on July 12, 2021 adding \$50.00 for additional utilities due to an additional occupant, and that the bills are divided by the number of occupants in the building. There are 6 people living in the building, and 3 of them reside in the rental unit, so the tenants should pay half the bill. The original tenancy agreement specified that utilities, including heat, electricity and natural gas are included in the rent. The amendment states that the tenants pay the additional \$50.00 toward utilities and that if utilities continue to be higher in August, 2021 than the previous month the tenants would pay the excess amount due to the additional occupant. I find that to be an unconscionable term, given that there is a term of \$50.00 for the additional occupant. I dismiss the landlord's claim for utilities.

The *Residential Tenancy Act* specifies that a landlord must return a security deposit and pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the deposit(s) within that 15 day period. If the landlord fails to do so, the landlord must repay double the amount(s). Further, a landlord may only claim against a pet damage deposit for damages caused by a pet.

In this case, the tenancy ended on January 31, 2022 and the landlord testified that he received the tenants' forwarding address in writing on February 15, 2022. The landlord made the application on February 11, 2022, prior to receiving the forwarding address.

Since the landlord has not made a claim for damages caused by a pet, the landlord ought to have returned the pet damage deposit of \$200.00. Therefore, the landlord is indebted to the tenants double that amount, or \$400.00.

The landlord has applied to keep the \$775.00 security deposit within the time required. Having found that the landlord has established claims of \$124.46 for replacement of 2 element burners on the stove, a door stopper, a light dimmer switch and faucet aerator; and \$24.59 for a drain auger to unclog the bathtub drain, I order the landlord to keep \$149.05. Since the landlord has been partially successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee. I order the landlord to return the difference of \$925.95 to the tenants, and I grant a monetary order in favour of the tenants in that amount ($\$775.00 + \$400.00 = \$1,175.00 - \$149.05 - \$100.00 =$

\$925.95). The landlord must be served with the order, and the order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$925.95.

This order is final and binding and may be enforced.

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: October 03, 2022

Residential Tenancy Branch