



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 convened as a result of a Landlords' Application for Dispute Resolution, filed on May 30, 2022, wherein the Landlords requested monetary compensation from the Tenant in the amount of \$730.50 for cleaning and repair costs after the tenancy ended, authority to retain the Tenant's security deposit, and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on February 9, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenant for cleaning and repair costs?
2. What should happen with the Tenant's security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

The tenancy began September 1, 2020. The Tenant paid \$1,700.00 per month in rent and \$850.00 as a security deposit. The tenancy ended April 30, 2022.

The Landlords claimed that the Tenant failed to clean the rental unit as required and left the unit damaged; in this respect the Landlord sought the following:

Repairs to the kitchen sink	\$367.50
Electrical repairs	\$63.00
Cleaning costs	\$200.00
Filing fee	\$100.00
TOTAL CLAIMED	\$730.50

The Landlord A.Y. testified that the Tenant failed to attend the rental unit at the agreed upon time to participate in the move out condition inspection. In this respect he testified that the Tenant made arrangements to inspect the unit and then at the last minute he cancelled. A.Y. also stated that the Tenant simply asked him to attend his work to retrieve the keys. The Landlord further stated that the Tenant did not propose an alternate time to inspect the unit.

A.Y. stated that after retrieving the key, he went to the unit and noticed that the garburator was not draining. A plumber cleared it out and found coins and plastic; photos submitted by the Landlords confirm this. The Landlords submitted that this was misuse by the Tenant.

In terms of the electrical costs A.Y. stated that one of the light fixtures was damaged at the end of the tenancy and the cost of the electrician's time to replace the fixture was \$63.00.

In terms of cleaning the Landlords sought the sum of \$200.00. In support of this portion of the Landlords' claim the Landlords provided a photo of the inside of the dishwasher and the kitchen sink.

In response to the Landlords' claim the Tenant testified as follows.

The Tenant stated that in terms of the move out inspection, he says he told the Landlord that he couldn't make it to the inspection on the date and offered the Landlords an alternate date for the inspection. He said that at first A.Y. said yes, and then he said he could not make it. The Tenant further stated that he is a manager at two locations and offered to leave the keys at an alternate location so that A.Y. could meet with the cleaners.

The Tenant claimed he spent three days of cleaning. The Tenant also noted that the Landlords only submitted one photo of the sink and one of the dishwasher and if it were as messy as the Landlords claimed the Landlords should have submitted photos of this.

The Tenant failed to submit any documentary evidence to support his testimony. He claimed that he had a family emergency and was out of the country until September 2022.

In terms of the \$367.50 cost to fix the garburator the Tenant stated that it is possible that he accidentally put coins in the sink; although he denied doing so purposely. He also claimed that he informed the Landlords just before he moved out that the garburator was not working.

In terms of the cost to replace the broken light fixture the Tenant claimed that the light fixture was not broken, but rather there was an issue with the electrical as the light bulbs repeatedly burned out every three months.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) 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.

Section 32 of the *Act* mandates the tenant's and landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I accept the Landlords' evidence that the garburator required repair at the end of the tenancy. While I am satisfied the Tenant did not damage the garburator intentionally, I find the garburator was damaged during the tenancy such that I find that the cost of the repair is recoverable from the Tenant. I therefore award the Landlords the sum of **\$367.50**.

The Landlords also sought \$63.00 for the cost to repair a light fixture claiming it was broken by the Tenant. The Tenant testified that the fixture was not broken, but rather prematurely burned out light bulbs for reasons unknown to him. On balance, and without corroborating evidence supporting either parties' version of events, I am unable to reconcile this testimony. I therefore find the Landlords have failed to submit sufficient evidence to support a finding that the Tenant caused damage to the light fixture. I therefore dismiss the Landlords' claim for the cost of the electrician.

The Landlords also sought the sum of \$200.00 for the cost of cleaning. In support the Landlords provided two photos: one of the inside of the dishwasher and one of the sink. The garburator was malfunctioning such that the sink was not draining and this is consistent with the small amount of water showing in the Landlords' photos. The photo suggests the dishwasher required some light wiping.

As noted above, the Tenant must leave the rental unit *reasonably clean*. This does not necessarily mean "move in ready" as often a landlord will do additional light cleaning after a tenancy ends. I agree with the Tenant that had the rental unit required cleaning it was the Landlords' responsibility to submit photos of the rental unit to show such cleaning was necessary. I find the Landlords have submitted insufficient evidence to support a finding that the Tenant failed to leave the rental unit reasonably clean and I therefore dismiss the Landlords' request for cleaning costs.

As the Landlords have been partially successful I award the Landlords recovery of the **\$100.00** filing fee.

Conclusion

The Landlords' claim is granted in part. The Landlords are entitled to a total award of **\$467.50** representing recovery of the filing fee and the cost to repair the garburator.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlords to retain \$467.50 from the Tenant's \$850.00 security deposit.

The Landlords must return the balance of the Tenant's deposit, namely, **\$382.50** to the Tenant. In furtherance of this the Tenant is entitled to a Monetary Order in the amount of \$382.50. This Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: February 15, 2023

Residential Tenancy Branch