



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application for dispute resolution (application) under the Residential Tenancy Act (Act) for compensation for alleged damage to the rental unit by the tenant, compensation for a monetary loss or other money owed, authority to keep the tenant's security deposit to use against a monetary award and recovery of the cost of the filing fee.

The landlord and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed. The landlord confirmed receipt of the tenant's evidence.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). 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.

Preliminary and Procedural Matters-

The tenant submitted that he did not receive all the evidence, which included seven pertinent pages. The tenant submitted that the landlord's photographs were on the back page of the condition inspection report (Report). The landlord submitted that his wife printed the pages. I will address these issues in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the relief sought as noted above and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on September 1, 2021 and ended on or about May 13, 2022, monthly rent was \$850, and the tenant paid a security deposit of \$425.

The landlord's monetary claim is \$491.81 for cleaning and painting, \$100 for the filing fee, and \$100 for the filing fee awarded to them in a previous dispute resolution decision in which the landlord was granted an order of possession of the rental unit.

In support of his application, the landlord said that at the beginning of the tenancy, the rental unit was freshly renovated, and everything was brand new and perfect. The landlord submitted that at the end of the tenancy, the walls were soiled and grimy and there was a burn in the countertop. Outside, the tenant left a big compost pile and garbage, which had to be cleaned and cleared, according to the landlord. The landlord submitted that there were 3 big planters left, containing soil and rocks.

The landlord submitted that the tenant did not do a good job of cleaning and they had to clean inside and out, saying that the compost pile left was just to get back at them for the tenant being evicted.

The landlord submitted that there was a full interior and exterior cleaning and the carpets were stained.

The landlord submitted that they tried to arrange a move-out inspection with an agent of the tenant, but they did not receive a response. The landlord submitted that the tenant was not allowed on the property after the tenancy ended.

Filed in evidence by the landlord were photographs of the relevant evidence at the end of the tenancy, a move-in and move-out condition inspection report (Report), the previous Decision of another arbitrator, dated May 4, 2022, a monetary order worksheet, and an invoice breaking down the components of the claim.

Tenant's response

The tenant said his evidence was before me. I have included relevant passages from the written statements, which were also provided in testimony.

- I deny the landlord's claim that I caused any damage to the property or failed to leave it in a clean condition. I took did not cause any damage and I took care to clean it thoroughly
- The landlord's claims and supposed evidence of proof of damage are false, misleading and fraudulent.
- I deny the claim that I chose not to attend two invitations for final inspection or send a representative in my place. In fact I appeared for a scheduled final inspection the day after I moved out, for which the landlord had served me notice, but he chose to not attend it. Our text messages are evidence that I attended and he did not. He subsequently made superficial but not genuine proposals for inspection were not made in good faith. In the next one he made it clear in writing that I would not be allowed to take part in it, and even then he cancelled it before I even received his notice. The one after that still required me not to attend.
- The landlord's supposed "invoice" to clean and repair the unit after I left is a self-serving document that he manufactured himself in order to support his claim. His own invoice is not a receipt or a professional estimate and it is not reliable.

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When I took possession there were some major deficiencies and many minor ones. Some major ones were remedied before the move-in condition inspection was conducted and some were not. Most were minor but they were many. I did not consider most of the minor ones as "damage" for the purpose of the inspection report, though the landlord cited them as damage in his highly questionable move-out condition inspection report.

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The move-out inspection report that the landlord served on me is incomplete, showing only pages 1, 2 and 3 out of 4 pages. The bottom of page 1 has been cut off and is unreadable. Page 4 has been replaced by a half page of indistinct thumbnail photographs, many of which overlap and obscure others. One isolated photo is smaller than my littlest fingernail. See Exhibit R - "Photo page on back of condition inspection report". I cannot tell what is in most of them and I have no way of knowing what they depict or how to respond.

I spent more than 7 hours doing a final clean up on my final day of moving out so as to leave no grounds for complaint. I dusted high and low removing all dust and cobwebs from the shelves, walls and crevices using my lightweight vacuum cleaner. See Exhibit F - "Vacuum with attachments".

I swept and washed the uncarpeted floors using household cleaners and disinfectants, cleaning cloths, sponges, brushes and mops. I washed the sinks, bathtub, and all the shelves and counters. I vacuumed the living room rug before cleaning it with a rented carpet cleaner -- see Exhibit G - "Rug Doctor receipt" for the rental receipt. I cleaned all appliances both inside and out, including washer and dryer, microwave, stove, oven and fridge.

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The "KITCHEN" section -- I deny the landlord's assertion completely that I left the kitchen in a dirty condition. I did not cause any paint chips, though some are mentioned in the move-in inspection report. In fact there were many places in the mobile that had been hastily painted before I moved in, with many missed patches and blistered or peeling paint over surfaces that had not been properly prepared before painting. I did not raise this matter during the move-in inspection because I did not consider those things to be "damage" for the purposes of the report.

I deny there was grime and dirt on the kitchen floor because I swept and washed all of the uncarpeted floors thoroughly before I left. Washing the kitchen floor was the last thing I did before leaving the unit because it was nearest the door. The claim of scratched floor can be dismissed because the "scuff marks" were noted in the move-in inspection as "scratches", and no new ones were made during my tenancy.

There was a slight scorch mark in a corner of the countertop near the sink when I moved in. The countertop was essentially cheap fibre-board covered by a layer of paint that was not heat resistant. The landlord had cautioned me about that earlier when I first moved in and so I used trivets whenever I had hot containers. The blemish could be restored by slight sanding and repainting. I did not know about it during the move-in inspection because it was concealed by the microwave being placed over it in the corner, a hand width from the sink. Being so close to the sink created a shock hazard and so I moved it shortly after the inspection, at which time I discovered the mark. I reported it to the landlord when he

came by a week or so later to repair the broken front step. I did not have any appliances that could cause such a burn and never used that area for putting hot items.

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"Cabinets and Doors" also carries the comment in the move-in column, "Back splash board is coming off". The words "Need sealing" are from the move-in inspection but are written in the move-out column. The landlord has not pointed out the earlier entry from the move-out entry and so the report as presented can be misleading. The splash guard was never repaired during my tenancy despite the landlord's promise to do so. The landlord says that area was left dirty. However before leaving I left it as clean as reasonably possible. I cleaned the exposed side of the splash board, it was obviously not possible to dig out any material from the thin gap between the splash board and the wall.

The stove was old and in poor condition. But I reject the claim that I left it dirty because I thoroughly cleaned it before leaving, including the stovetop, front, sides, burner elements, the inside of the oven, oven racks and the bottom tray. I cleaned each individual part separately. I did not leave any white crust on the walls of the oven. That is just nonsense. When cleaning the stove I also cleaned the exhaust hood and fan.

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LIVING ROOM -- I deny the landlord's claims entirely. I dusted the walls and trim high and low and ensured there were no marks on them when I left. I vacuumed the rug before cleaning it with a rented rug cleaning machine and a solution recommended by the store where I got the machine. See Exhibit F - "Vacuum with attachments". The claim of "At least 6 large stains, dirt marks" is preposterous nonsense.

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BATHROOM -- I reject the landlord's complaint of dirt and grime in the bathroom entirely. I cleaned the bathroom especially thoroughly.

I washed the walls of the shower area and even the ceiling. I hand washed the floor, including around and behind the toilet and the valence for the plumbing pipes. After the move-in inspection I realized the valence was dirty and grimy when I moved in, but I did not complain.

I also washed the bathroom sink, countertop, mirror and adjacent walls, including around the light switches.

I paid special attention to the toilet. I cleaned and disinfected it thoroughly all around the outside. On the inside I did the same, using a “toilet duck” type cleansers and a toilet brush. I definitely did not leave it soiled with hair and waste stains and the landlord alleges.

[Reproduced as written]

The tenant’s additional evidence included photographs of the rental unit, text messages, notice from the landlord of an inspection for May 13, 2022, and a page with all the photographs in the landlord’s evidence filed with the RTB, imposed on one page, in black and white shade and very small and overlapping.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As to the costs claimed by the landlord associated with cleaning and repairing, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In evaluating the landlord's claim, firstly, I place no evidentiary weight on the condition inspection report to support the claim. The Act requires that a landlord and tenant together inspect the rental unit at the end of the tenancy. This does not mean a landlord may require a tenant to be represented by an agent. I find the tenant's evidence shows that the landlord sent the tenant a notice on May 13, 2022, for an inspection the next day, and on May 14, 2022, the tenant showed up and was told to leave the property. I find the evidence also shows that the tenant was then not present for the ensuing inspection as he was not allowed on the property. For this reason, I find the landlord breached the Act in not conducting the inspection with the tenant.

I have reviewed the landlord's photographic evidence and while he has submitted up-close photos of the areas of concern pertaining to the claim, I find these photographs were small and taken at close range. However, the landlord has not provided equally up-close photos from the start of the tenancy. Although the landlord's photographs show very minor deficiencies in some items, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean.

The tenant submitted that there was a small burn mark on the countertop when he moved in, but was not listed on the move-in Report. The tenant submitted that he did not notice the burn mark as it was covered by the microwave. I also do not find that the landlord sufficiently set out how the countertop was repaired and why it took 3 hours for a repair.

For all these reasons, I find the landlord submitted insufficient evidence to support his claim for cleaning and repairs to the interior of the rental unit. I therefore **dismiss** the

landlord's claim for repair to the countertop for \$180, steam clean materials and labour for \$125.89, general cleaning for \$75, **without leave to reapply**.

As to the exterior, I find the landlord's photographs show some compost left behind by the tenant, and I find the landlord's claim for \$50 for removal to be reasonable. I **grant** the landlord a monetary award of **\$50**.

I **dismiss** the landlord's claim for \$37.50, **without leave to reapply**, as I accept the tenant's evidence that the material was potting soil and could be left on the grass.

I **dismiss** the landlord's claim for GST, **without leave to reapply**, as I find there was insufficient evidence submitted that the amount of \$23.42 was paid.

I find the landlord's claim for \$100 for the filing fee for another dispute resolution is unclear. The other arbitrator in a Decision of May 4, 2022, awarded the landlord recovery of the fee of \$100 and authorized the landlord to deduct \$100 from the tenant's security deposit of \$425. The landlord's current application was filed on June 8, 2022.

As I find this claim unclear, as the matter of the other filing fee was dealt with prior to this application, I **dismiss** the landlord's claim for an additional \$100, **without leave to reapply**.

As the landlord's application was mostly unsuccessful, I grant the landlord a partial recovery of the filing fee, for \$50.

I grant the landlord a monetary award of \$100, comprised of \$50 for compost removal and \$50 for partial recovery of the filing fee.

I direct the landlord to deduct \$100 from the tenant's remaining security deposit of \$325, which is the tenant's security deposit of \$425, less the \$100 from the previous dispute resolution Decision of May 4, 2022. I order the landlord to return the balance of \$225, immediately. To this amount, I add \$0.93, which is interest on the tenant's remaining security deposit. To give effect to this order, I issue the tenant a monetary order (Order) pursuant to section 67 of the Act for the amount **\$225.93**.

Should the landlord fail to pay the tenant this amount without delay, the Order must be served upon the landlords for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

I note that I did not double the amount of the tenant's balance of the their security deposit. Although the landlord's right to claim against the tenant's security deposit for damage was extinguished due to his failure to conduct a move-out inspection with the tenant, the landlord's claim also included a claim for cleaning, which I do not find is damage.

I further note that although I find the landlord did not serve the tenant the exact duplicate photographic evidence as filed with the RTB, I find it was not necessary to decide whether to exclude the evidence or not. The tenant agreed that compost was left behind.

Conclusion

The landlord's application was partially successful, as the landlord is granted a monetary award of \$100, for the reasons as noted above.

The landlord is ordered retain \$100 from the tenant's security deposit and ordered to return the balance and interest of the tenants' security deposit of \$225.93, immediately.

The tenant is issued a monetary order in the amount of \$225.93.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 16, 2023

Residential Tenancy Branch