



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1171950 BC Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on August 29, 2022 for:

1. A Monetary Order for damages to the unit - Section 67;
2. An Order for the retention of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 9, 2022 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity to be heard, to present evidence and to make submissions. It is noted that the Tenant’s application only names Tenant ML as a Party and the Landlord names both Tenant ML and TM as a Party.

Preliminary Matters

The Landlord provided a monetary order worksheet that set out a total claimed amount that was inconsistent with the amount claimed on the application. The Landlord was given opportunity at the onset of the hearing to revise its monetary worksheet to be consistent with its application. The Landlord reduced its overholding rent claim to \$123.00.

The Landlord confirms that the Tenants were not provided with color photos for evidence as given to the Residential Tenancy Branch (the “RTB”). The Tenants were

only provided with black and white photocopies and the Tenant states that nothing can be seen on the photos.

Rule 3.7 of the RTB Rules of Procedure provides that all documents intended to be relied on must be clear and that identical photographs must be provided to the other party. Given the undisputed evidence that the Landlord only provided unclear black and white photocopies of the color photos provided to the RTB I decline to consider the Landlord's photo evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Tenants entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy under written agreement was signed on July 1, 2021. On that date the Parties mutually conducted a move-in inspection with a completed report. At the outset of the tenancy the Landlord collected a security deposit of \$1,075.00 and a pet deposit of \$1,075.00. The tenancy started on July 15, 2021 for a fixed term to end on June 30, 2022. The agreement required the Tenants to vacate the unit at the end of the term as the Landlord would occupy the unit. During the tenancy rent of \$2,150.00 was payable on the first day of each month. On June 30, 2022 at 2:00 p.m. the Parties mutually conducted a move-out inspection with the Tenants' furniture still in place. No move-out report was completed then or later. On July 1, 2022 between 1:30 and 2:00 a.m. the Tenants completed their move out of the unit. On July 18, 2022 the Landlord returned \$2,000.00 of the combined security and pet deposits to the Tenants by registered mail. The Landlord retained \$150.00 without the agreement of the Tenants. The Landlord received the Tenants' forwarding address on August 10, 2022 and made its application on August 29, 2022.

The Tenant claims return of the remaining security and pet deposit.

The Landlord states that on July 15, 2021 the Tenants were given a copy of the move-in condition report with the copy of the signed lease. The Tenant states that they did not receive a copy of the move-in report and that no completed report was given to the Tenants for signature.

The Landlord states that they could not move into the unit until July 15, 2022 because the unit required cleaning. The Landlord states that they continue to reside in the unit to date. The Landlord states that the Tenants left the unit with unclean floors, counters, and some cabinets and left garbage consisting of two unfolded cardboard moving boxes. The Landlord claims \$147.00 as the cleaning costs, including the steam cleaning of the stair carpet, with labour of 4 hours. The Landlord provides an invoice for this amount that does not set out any details of the cleaning done. The Tenant states that they never left any boxes.

The Landlord states that the cleaner could not remove the stain on the carpet, so they hired a professional carpet cleaner. The Landlord claims this cost of \$157.50. The Landlord provides an invoice dated July 27, 2022. The Tenant states that no stain was left on the carpet at move-out and that upon calling the carpet cleaning company indicated on the Landlord's receipt the Tenant was informed that the rate charged the Landlord was a standard rate and that any issues with the carpet would have been noted on the invoice. The Tenant states that no stain removal is indicated on the Landlord's invoice.

The Landlord states that the Tenant left a wall with nail holes. The Landlord claims \$100.00 as the cost of painting done by a third party however the Landlord provides no invoice from that person.

The Landlord claims \$200.00 for garbage removal costs to remove the 2 flat cardboard boxes and some dirt left on the floor. The Landlord states that the tenancy agreement provides for this cost if garbage is left behind.

The Landlord states that after the move-out inspection the Landlord returned to the other city that they resided in and that they planned to move into the unit a few days later. The Landlord states that as the inspection was done before the Tenants were fully moved out of the unit the Landlord had to return again on July 6, 2022 to check the state of the unit before the Landlord's move into the unit. The Landlord claims \$123.00 as the partial flight costs incurred by the Landlord on that date. The Landlord also claims this as an overholding rent cost. The Tenant states that the sole person who acted as Landlord during the tenancy is the husband of the Landlord who has appeared at the hearing. The husband did not attend the hearing. The Landlord confirms that the husband is also an owner. The Tenant claims that the husband agreed to the Tenant's delayed departure that was due to scheduling problems with the moving truck and that the Landlord agreed to collect the keys on the morning of July 1, 2022. The Tenant states that the keys were returned on that date.

Analysis

Section 24(2)(c) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Section 18(1)(a) of the Regulations provides that the landlord must give the tenant a copy of the signed move-in condition inspection report promptly and in any event within 7 days after the condition inspection is completed. Based on the undisputed evidence that the move-in inspection was conducted on July 1, 2021 and the Landlord's evidence that a copy of that inspection report was not provided to the Tenants until July 15, 2021 I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in the only option available to the Landlord at move-out was to return the full security deposit. Based on the undisputed facts that the Landlord did not return the full security deposit and, further, did not make its application within 15 days of receipt of the forwarding address, I find that the Landlord must now pay the Tenant \$4,300.00 as double the original combined security and pet deposit. Deducting the \$2,000.00 already returned leaves **\$2,300.00** payable to the Tenants. I calculate the interest payable only on the \$150.00 that was withheld from the Tenants and, based on the date the tenancy agreement was signed, for the period July 1, 2021 to this date. This interest amount is **\$1.15** for a total amount owed to the Tenants of **\$2,301.15**. As the Tenant's claim has been successful, I find that the Tenant is also entitled to recovery of the **\$100.00** filing fee for a total amount of **\$2,401.15**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary.

As the Tenant only disputed not having left any garbage behind but did not dispute that the floors were left unclean and as the cleaning invoice does not include details, I find that the Landlord has substantiated a nominal cost of **\$100.00** for cleaning the unit, including the stair carpet.

Given the Landlord's evidence that they moved into the unit prior to the second cleaning of the stair carpets and after the unit had been cleaned, as the Landlord has no supporting evidence of the state of the carpet at move-out and given the Tenants evidence that no stain was present at move-out I find on a balance of probabilities that the Landlord has not substantiated that the Tenants left the carpet stained at move-out. I dismiss the claim for the additional carpet cleaning cost of \$157.50.

As the Landlord has not provided any supporting evidence of having paid for the painting costs claimed I find that the Landlord has not substantiated that it incurred the costs claimed and I dismiss the claim for \$100.00.

Section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the Act only requires cleaning to a reasonable standard, I find that any requirement for a flat rate on garbage removal or for professional cleaning is inconsistent with Act and therefore not enforceable. Nonetheless, as the Landlord's claim as the costs for the simple removal of flattened cardboard boxes and some dirt appear to be excessive and would also would reasonably considered to have been included in the cleaning done to the unit by the Landlord's cleaner and given the Tenant's evidence that no cardboard boxes were left, I find that the Landlord has not substantiated additional cleaning costs or any garbage removal costs. I dismiss the claim for \$200.00.

The basis for the Landlord's claim partial flight costs due to the Tenant's late move out of the unit is not consistent with the Landlord's additional testimony that they planned to

move into the unit at about the same date at the Landlord returned by air to the unit. I also found the Landlord's evidence and argument to be confusing as to the basis of their claim for damages. For these reasons I cannot determine a basis for the Landlord's claim for \$123.00 other than as overholding rent. However, the Tenant's evidence of the husband's approval for a late departure holds a ring of truth and I note that there is no evidence that the Landlord's move into the unit was inconvenienced by this late departure. For these reasons I find that the Landlord has not substantiated its claim to either damages or overholding rent due to the Tenant leaving the unit in the early hours of July 1, 2022. I dismiss this claim.

As the Landlord's claims have met with minimal success, I find that the Landlord is only entitled to \$50.00 as recovery of half the filing fee for a total entitlement of **\$150.00**. Deducting this amount from the **\$2,401.15** payable to the Tenant leaves **\$2,251.15** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$2,251.15**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 24, 2023

Residential Tenancy Branch