



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on September 09, 2023 was sent to the Tenant, via registered mail, although he cannot recall the date it was served. The Tenant stated that these documents were received in the mail many months ago. As the Tenant acknowledged receipt of these documents, the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

With the consent of both parties, I viewed the decision from a previous dispute resolution proceeding, the number of which appears on the first page of this decision. The previous dispute resolution proceeding was brought to my attention by the Tenant at the hearing.

In those proceedings the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement. The Tenant and the Agent for the Landlord agree that this previous dispute related to spilled soup, which is also the issue in dispute at these proceedings.

It appears that the Residential Tenancy Branch Arbitrator who considered the Tenant's Application for Dispute Resolution concluded that she did not have authority to grant the application for an Order requiring the Landlord to comply with the *Act* and/or the tenancy agreement, as the rental unit has been vacated.

I find that there is nothing in the previous decision that prevents me from considering this Application for Dispute Resolution.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental property and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on August 15, 2021;
- the tenancy ended on August 31, 2022;
- the Tenant paid a security deposit of \$800.00;
- \$700.00 of the deposit was paid on July 30, 2021 and \$100.00 was paid on August 6, 2021;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed at the end of the tenancy;
- the Tenant provided the Landlord with a forwarding address, in writing, on August 28, 2022;
- the Landlord did not have written authority to retain any portion of the security deposit; and

- the deposit has not been returned.

Residential Tenancy Branch records show that the Landlord filed the application to keep the security deposit on September 09, 2022.

The Landlord is seeking compensation, in the amount of \$173.25, for cleaning the carpet in the common area outside of the unit. The parties agree that the Tenant accidentally spilled soup on the carpet on May 05, 2022.

The Tenant stated that:

- shortly after spilling the soup, she attempted to clean it using a broom and a vacuum;
- the building manager told her that cleaning it with a vacuum and broom would be insufficient;
- she told the building manager that she would rent a rug cleaner and use it to clean the carpet;
- the building manager told her that he could not wait that long to clean the carpet and that he would have it professionally cleaned;
- she told the manager it would take approximately 30 to 60 minutes to rent a rug cleaner;
- she did not tell the building manager she was returning to work after the spill; and
- she had an appointment for later in the day on May 05, 2022, but she did not attend that appointment.

The Agent for the Landlord stated that:

- shortly after spilling the soup, the Tenant was going to clean the spill with a broom and a vacuum;
- the building manager told her that cleaning it with a vacuum and broom would be insufficient;
- the Tenant told the building manager that she would rent a rug cleaner and use it to clean the carpet after she returned home from work; and
- the building manager determined that the stain should not be left until the Tenant finished work so he told the Tenant he would have it professionally cleaned.

The Landlord submitted an incident report from the building manager who interacted with the Tenant in regard to this spill. In the report the manager declares that the Tenant told him she “had to leave” and could not clean the spill; while he was cleaning

the spill, the Tenant came out of her unit with a broom and vacuum; and that the spill was professionally cleaned a “few hours later”.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Residential Tenancy Act (Act)* stipulates that 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.

On the basis of the undisputed evidence, I find that the Tenant accidentally spilled some soup on the carpet in the common area and that she was obligated to clean the spill, pursuant to section 32(3) of the *Act*.

On the basis of the testimony of the Tenant, I find that she attempted to clean the spill shortly after it occurred. I find this testimony is corroborated by the incident report submitted in evidence, in which the building manager declares that the Tenant brought a broom and a vacuum to the spill site.

I find that the Landlord did not give the Tenant a reasonable opportunity to clean the spill. In reaching this conclusion, I was influenced, in part, by the undisputed testimony that the Tenant intended to clean the spill with a vacuum and broom and the manager told the Tenant that cleaning method would be insufficient.

As the Landlord did not submit a photograph of the spill, I am unable to make an independent decision on whether it could be cleaned with a vacuum and broom. In the absence of a photograph, I am unable to determine whether it could have been initially cleaned with a vacuum or broom and then subsequently washed by hand. Regardless of whether this method of cleaning would have been adequate, I find that the information provided by the manager dissuaded the Tenant from attempting to personally clean the spill.

In concluding that the Landlord did not give the Tenant a reasonable opportunity to clean the spill, I was influenced, in part, by the undisputed testimony that the Tenant told the manager that she would rent a carpet cleaner and clean the spill. I find this was a reasonable suggestion by the Tenant and that the manager dissuaded her from cleaning the carpet in this manner by advising her that the cleaning could not wait and he would hire a professional cleaner.

In the absence of a photograph of the spill and in the absence of a statement from a professional, I find that the Landlord submitted insufficient evidence to support the building manager's opinion that the spill needed to be cleaned immediately. The building manager's incident report declares that the spill was professionally cleaned "a few hours later", which clearly does not support the opinion that it needed to be cleaned immediately.

I find that the Landlord submitted insufficient evidence to establish that the Tenant would not have cleaned the spill in a reasonably timely manner if the manager had not dissuaded her from renting a carpet cleaner. In reaching this conclusion I was influenced by the Tenant's testimony that she could have rented a carpet cleaner 30-60 minutes after the spill occurred.

I find that the Landlord has submitted insufficient evidence to corroborate the Agent for the Landlord's testimony that cleaning the carpet would have been delayed until the Tenant returned from work. The Tenant denies that she went to work after the spill and there is nothing in the incident report that indicates she told the manager she had to work.

Even if I accepted the Landlord's submission that the Tenant told the building manager that she had to leave and could not immediately clean the carpet, I find no reason to discount the Tenant's testimony that she cancelled the appointment she had planned to attend. Regardless, the Landlord has failed to establish that there would have been an unreasonable delay in cleaning the carpet even if the Tenant had she chosen to keep her appointment.

On the basis of the undisputed evidence, I find that the Landlord cleaned the carpet prior to the Tenant being given a reasonable opportunity to clean the carpet in a manner that she deemed appropriate. I find that the Landlord's actions prevented the Tenant

from complying with section 32(3) of the *Act* and I therefore find that the Landlord is not entitled to compensation for cleaning the carpet.

The Landlord's application for a monetary Order is dismissed, without leave to reapply.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and that the Landlord is therefore not entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply.

As the Landlord has not established a right to keep the remainder of the security deposit, I find that \$800.00 security deposit plus interest of \$6.54 must be returned to the Tenant and I grant the Tenant a monetary Order in this amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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 Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 02, 2023

Residential Tenancy Branch