



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 was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

The landlord and both tenants attended the hearing, however one of the tenants disconnected from the conference call prior to the conclusion for another commitment. The landlord and the remaining tenant each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which 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?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 16, 2018 and ended at the end of July, 2022. Rent in the amount of \$1,200.00 was payable on the 1st day of each month, which was increased by \$31.20 in 2019 and again by \$17.00 per month on April 1, 2022, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00, which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in or move-out condition inspection reports were completed; the tenants refused, but not in

writing, and the landlord did not complete either report in the absence of the tenants. The rental unit is a bottom floor suite in a duplex, and the upper floor is also rented.

The landlord further testified that on June 18, 2022 the tenants sent a text message to the landlord stating that the tenants wanted to move out on July 4 when they take possession of their new house. Rent was paid to the end of July. The landlord received the notice to end the tenancy by text message, and accepted it as a notice ending the tenancy. The landlord received the tenants' forwarding address by email on July 14, 2022, which was also accepted. The landlord re-rented on August 1, 2022, but the new tenants didn't move in until August 20, 2022.

The landlord claims **\$1,346.63** to replace cabinet doors in the kitchen and bathroom, and a copy of a receipt has been provided for this hearing. The landlord testified that the entire building was new in 2013 and the landlord purchased it in 2014.

The landlord and spouse did some cleaning after the tenancy ended, and hired cleaners as well. A copy of a cleaning receipt for **\$255.00** has also been provided, which the landlord claims as against the tenants.

The rental unit was last painted in 2013, but the tenants left holes in walls, which were not present at the beginning of the tenancy. Photographs, as well as photographs of scribbling on a wall have also been provided. A copy of an Invoice has been provided for this hearing.

The landlord also claims **\$2,016.00** for flooring installation and an Estimate has been provided for this hearing. The landlord also claims **\$3,592.25** for purchasing laminate 10 ml flooring. All rooms except the bathroom had good sized holes in the top surface of all rooms. Photographs have also been provided. The flooring was also installed in 2013.

The tenant testified that the landlord's claim is a big sum of money, and considering how long the tenants lived there, some must be considered wear and tear. A hole in the wall was caused by the tenants' children, however, scratches on the walls from couches after so many years is normal wear and tear. Wear and tear to the flooring is also normal. The cabinets were not in good shape either, but greasy, likely from previous tenants. It is not reasonable to claim anything for wear and tear on cabinets.

The tenants told the landlord that they agreed to paint, but were also under the impression that the landlord would be responsible anyway. Nothing except a fresh coat of paint was new at the beginning of the tenancy.

When the tenants moved in, there was only a fresh coat of paint and a leak from above, water or something. The tenants used buckets and the leak had to be fixed.

The tenants did not agree that the landlord should keep the security deposit.

It was inhumane how the tenants were treated from the beginning, and when the tenants gave notice to end the tenancy, within 2 weeks, the landlord scheduled a painter, who did a walkthrough. In July when the tenants were going to start cleaning, the landlord called questioning when the damages would be repaired and when the tenants were going to move out. The tenants were given a very short period of time, despite each having demanding schedules, and asked for advice of their Real Estate Agent. Calls kept coming from the landlord questioning when the tenants were moving out and about repairs.

If the tenants had known all of this, a member of the tenants' church was willing to fix the drywall and finish cleaning. Drywall was the only damage done, but due to short notice the tenants didn't have a fair opportunity. The tenants found the landlord and a painter in the rental unit, without any communication at all when the tenants arrived to clean. The tenants asked that they excuse the tenants so they could enter and clean.

The landlord's photographs were taken a week before the tenants moved out. Keys were returned on June 30, 2022 and the photographs were taken before the tenants finished cleaning.

The tenants moved in at the beginning of June, 2018, and were supposed to move out at the end of July, 2022, but due to the landlord's insistence on when the tenants would move out, the tenants left on the 20th of June, 2022. The tenants took possession of their new home on July 5 or 6 and the rental unit was empty by about 2 weeks after that, so approximately the weekend of the 9th of July, and returned with a moving truck on the 11th. The following weekend the tenants were in and out cleaning, and rent was paid to the 30th.

Analysis

In order to be successful in a claim for damage or loss, 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 accepted the tenants' notice to end the tenancy effective July 31, 2022, and the parties agree that there are no rental arrears, which means that the tenants had exclusive possession of the rental unit until 1:00 p.m. on July 31, 2022.

The tenants do not deny that a hole in a wall was caused by the tenants' child, and I think I can take judicial notice that the scribbling on another wall was caused by the tenants' child.

The landlord did not dispute the tenants' testimony that the photographs taken by the landlord were taken before the tenants cleaned. Therefore, I do not find them particularly useful. I also accept the undisputed testimony of the tenant that the landlord kept bothering the tenants about when they were going to move out. The text messages provided for this hearing substantiate that, which I accept caused the tenants to leave prior to the end of the tenancy and prior to painting and finishing the cleaning. That is not mitigation. I dismiss the landlord's application for cleaning.

I also refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements, which puts the useful life of interior paint at 4 years. Therefore, there is no question that the landlord would have had to repaint in any event, and cannot claim that from the tenants. The Invoice provided by the landlord includes "Drywall repairs, paint ceilings, walls, trim and doors," but does not indicate what portion of the \$4,000.00 bill relates to patching the hole, nor is there any evidence that the ceilings, trim and doors were damaged by the tenants. I dismiss the landlord's claim for the painting Invoice.

With respect to cabinet doors in the kitchen and bathroom, I have reviewed the Invoices provided by the landlord dated August 3, 2022 for "Custom Reface cabinet doors," for \$907.50 and "Install – Kitchen" for \$375.00. The amount of GST on the Invoice is \$64.13, for a total of \$1,346.63. The useful life of cabinets is considered to be 25 years. Considering that the cabinets were new in 2013, and the tenants vacated prior to July 31, 2022, that means that the cabinets had 9 years of wear and tear, and I find that the landlord has established a claim of **\$861.84** ($\$1,346.63 / 25 = \$53.86 \times 9 = \484.79; $\$1,346.63 - \$484.79 = \$861.84$).

With respect to flooring, the Estimate provided by the landlord is dated August 31, 2022, and is for installation only of laminate and/or vinyl plank flooring; 31' 10" x 24' 2". The GST on the receipt is \$96.00 for a total of \$2,016.00. The landlord has also provided a copy of a receipt for flooring at a cost of \$3,592.25 including taxes. The black and white photographs provided by the landlord show that there is some peeling of the top layer of the laminate flooring with 2 small areas that appear to be more damaged than the rest of the flooring. I find that the majority of the peeling is normal wear and tear, and considering that there are no move-in or move-out condition inspection reports, I cannot be satisfied that some of the wear and tear didn't exist prior to the beginning of this tenancy. Also, to claim almost 31 feet of flooring by over 24 feet is not mitigation, but an attempt by the landlord to have the tenants re-floor the entire house. I am not satisfied that the entire house required new flooring due to any damage caused by the tenants, and I dismiss that portion of the landlord's application.

With respect to the landlord's application respecting the security deposit, I note that the Addendum to the tenancy agreement states: "BELOW YOU ARE SIGNING FOR CHARGES AGAINST YOUR SECURITY DEPOSIT WHEN YOU VACATE," and 4 items are listed regarding steam cleaning the carpets, cleaning the premises, rent or late fees outstanding and damage to the rental unit not repaired upon move out, will be deducted from the security deposit. That is contrary to the *Residential Tenancy Act*. A landlord may not require or accept any agreement by a tenant to make any deductions from a security deposit at the beginning of the tenancy, and this Addendum is dated June 15, 2012.

The *Act* requires a landlord to return a security deposit 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 a claim against the security deposit within that 15 day period. If the landlord fails to comply, the landlord must repay the tenants double the amount of the security deposit. Also, a landlord's right to make a claim for damages against a security deposit is extinguished if the landlord fails to ensure that the move-in and move-out condition inspection reports are completed, and the regulations go into detail of how that is to happen.

In this case, the landlord testified that the tenants refused to do a move-in or a move-out condition inspection report, and I do not accept that. If the tenants refused to complete a move-in condition inspection report, the landlord ought not to have rented to the tenants. Further, the *Act* places the onus on the landlord to provide the tenants with at least 2 opportunities to schedule the inspections, and there is no evidence that the

landlord tried to schedule either inspection. Therefore, I find that the landlord's right to make a claim against the security deposit for damages is extinguished.

The landlord testified that on July 14, 2022 he received the tenants' forwarding address in an email, which he accepted, as he did the tenants' notice to vacate. The landlord made this claim on October 21, 2022, long after the 15 day period expired.

Considering the finding that the landlord's right to claim against the security deposit for damages is extinguished, and the finding that the landlord did not make a claim within 15 days of the end of the tenancy or receipt of the tenants' forwarding address in writing, the landlord must repay the tenants double the amount, or \$1,200.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

Having found that the landlord has established a claim of \$861.84 for flooring and \$100.00 for the filing fee, and the landlord must repay the tenants double the amount of the security deposit, or \$1,200.00, I set off those amounts and I order the landlord to pay the tenants the difference of \$238.15. I grant a monetary order in favour of the tenants in that amount. The landlord must be served with the order, which 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 **\$238.15**. 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: June 1, 2023

Residential Tenancy Branch