



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MND MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on July 13, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and initial evidence package well in advance of the hearing. The Landlord stated they sent a second evidence package to the Tenants, via registered mail. However, she did not have any proof of mailing and the Tenant denied receiving this second package. I find the first package was sufficiently served. However, I find the second package was not, and it is inadmissible. The Landlord confirmed receipt of the Tenant's evidence package.

No further service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for damage or loss under the Act?
- Are the Landlords entitled to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested?

Background and Evidence

The Landlord collected, and still holds, a security deposit of \$1,050.00.

The tenancy started on or around September 1, 2021, and ended on September 30, 2022. A move-in inspection was completed on September 1, 2021, and the move-out inspection was completed on September 30, 2022. The Tenant was provided with a copy of both reports, and signed the move-in inspection but did not sign the move-out inspection due to issues she had with the report.

A copy of a text message was provided into evidence, which shows that the Landlord received the Tenant's forwarding address, in writing, on October 2, 2022. The Landlord filed an application against the deposits on October 17, 2022.

The Landlord did not amend her application beyond what was included in her initial application and monetary order worksheet.

The Landlords are seeking the following, as per the initial worksheet provided:

- 1) \$195.11 – BC Hydro bill

This amount was for the last couple of months of the tenancy. The Tenant agreed to pay this amount.

- 2) \$28.50 – Preparation for inspection

The Landlord stated that she asked a friend of hers to attend the rental unit on August 28, 2022, to make sure the rental unit was clean and for photos (to be taken for the upcoming rental ad posting). The Landlord stated that the unit was not clean, and so she paid the above noted amounts for cleaning supplies to clean the unit before she took photos for the rental ad. Receipts were provided.

The Tenant does not feel she should have to pay for this amount and denies it was dirty.

- 3) \$210.00 – Deep Cleaning after the tenancy

The Landlord explained that the rental unit was very dirty, and required significant cleaning at the end of the tenancy, prior to re-renting the unit. The Landlord stated that the windows, cupboards, window sills, etc. A receipt was provided into evidence. The Landlord pointed to the photos she took, the move-out inspection, as well as the letter from her cleaner, as follows:

We cleaned your apartment in Langley and just wanted to give you brief description of the dirtiness of the property as you were not present at that time. All kitchen cabinets were very greasy so had to clean them twice to get rid of it. Inside of Oven and all-around stove and behind was very dirty. Sides of the Fridge door in middle, all around and behind was not cleaned. All Blinds and Windowsills were very filthy. All Baseboards were very dirty. Master Bedroom Washroom and bedroom baseboard (specially behind dresser) was very dirty. Removed so many black marks from Walls all over the unit but was unable to take all of it out! All Doors and trims and laundry machines were dirty. Not sure if there was dog in premises as so much pet hair everywhere

The Tenant took her own photos at the end of the tenancy, and pointed out that the unit was not dirty, as the Landlord has asserted. The Tenant stated that she never had any pets, and only ever had a cat visit once for a day, so the pet hair couldn't be from her.

4) \$462.00 – Extra Cleaning – Flooring etc.

The Landlord is seeking this amount for \$210.00 worth of carpet cleaning (3 bedrooms), \$140.00 for cleaning the wall and floor tiles in the bathroom, \$90.00 for steam cleaning the mattress and the area rug. A receipt was provided. The Landlord also pointed to the photos and the move-out inspection to show that the carpets weren't professionally cleaned, and as per the tenancy agreement, the Tenant was required to do this at the end of the tenancy. The Landlord stated that there were new stains on the mattress, and a photo was provided. No photo was provided of the area rug or the dirty tile.

The Tenant pointed to the photos she took at the end of the tenancy and asserted that she left the unit clean. She denies being responsible for this item.

5) \$30.00 – Hangers

The Landlord withdrew this item.

6) \$910.54 – Microwave replacement

The Landlord stated that she has not yet replaced the microwave, but this is the amount it will cost to replace it. The Landlord pointed to several cracks in the door, and the control panel that were not present at the start of the tenancy. The Landlord stated that it is not safe to operate the unit with cracks in it, and it cannot be repaired, so she has to replace it at some point.

The Tenant denies breaking the microwave and asserts it was broken before.

Analysis

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*.

Security Deposit

Under sections 24 and 36 of the Act, landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the Act and Residential Tenancy Regulation (the “Regulations”). Further, section 38 of the Act sets out specific requirements for dealing with a security deposit at the end of a tenancy.

In this case, I do not find there is sufficient evidence that either party extinguished their right to the deposit. The parties participated in a move-in and move-out inspection, and the Tenant was provided a copy of these reports after the fact. Further, although the Tenant did not sign the move-out inspection, I do not find this means she extinguished her right to the deposit, and it appears this was done because of some dysfunction and disagreement at the move-out inspection.

I am satisfied that the tenancy ended on September 30, 2022, which is the date the tenant moved out and the date of the move-out inspection. As per the text message provided into evidence, I am satisfied the Landlord received the Tenant’s forwarding address in writing on October 2, 2022, as this is when the Landlord responded to that text.

Pursuant to section 38(1) of the Act, the Landlord would have had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants’ forwarding address in writing to repay the security deposit or file a claim against it. The Landlord filed this application within the allowable time frame, and the Tenant is not entitled to double the deposits.

The Landlord holds \$1,050.00. Interest is calculated in accordance with the Act and the Regulations. Interest is payable only for 2023, as the years before that no interest was due. The interest accrued is \$10.89, which means the total deposit held is \$1,060.89.

Monetary Compensation

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

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 everything possible to minimize the damage or losses that were incurred.

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit. Both the Landlord and Tenant must sign the condition inspection report and the Landlord must give the Tenant a copy of that report in accordance with the regulations.

In this case, I have reviewed the condition inspection report, and I note that in the move-in portion of this report, most of the fields are left blank. As noted in that report, there are “condition codes” which was meant to indicate the condition of each item listed. The Landlord only put in a couple of codes where there were stains or marks, but did not specify what the condition was of the remaining items listed that were left blank. If the condition was in “good” condition, then the Landlord should have indicated as such on the report. However, this was not done, and it appears the report is incomplete. I find the same issue carries forward into the move-out portion of that report, and most of the items do not have a condition code to reflect the state of repair. Given this, I find the condition inspection report is unreliable and I afford it no weight. I have considered the photos taken at the end of the tenancy by both parties.

Next, I turn to the following items:

- 1) \$195.11 – BC Hydro bill

I award this item in full, as the Tenant agreed to pay for it.

- 2) \$28.50 – Preparation for inspection

I do not find there is any basis for reimbursement for this item. There is insufficient evidence that the rental unit was not reasonably clean, and the Landlord incurred this expense during the tenancy, to take photos for her rental ad. I do not find this is the Tenant’s responsibility.

- 3) \$210.00 – Deep Cleaning after the tenancy

I have reviewed the testimony and evidence on this matter. I note the Landlord opined that the rental unit was very dirty, and her cleaner corroborated this with her letter. I acknowledge that the Tenant provided her own photos, and opined that she cleaned it sufficiently. However, I find it more likely than not that this was not the case, and that the unit required time and effort to clean, before re-renting. I note there is staining on the stove, and debris in the cupboards, and surfaces. I am not satisfied that the Tenant left the unit in a reasonably clean state, which is a breach of the Act. I award this item, in full.

4) \$462.00 – Extra Cleaning – Flooring etc.

The Landlord is seeking this amount for \$210.00 worth of carpet cleaning (3 bedrooms), \$140.00 for cleaning the wall and floor tiles in the bathroom, \$90.00 for steam cleaning the mattress and the area rug.

I note the tenancy agreement specifies that the Tenant must have the carpets professionally cleaned at the end of the tenancy. The Landlord asserts this was not done, and the Tenant did not directly refute this. I award the carpet cleaning costs. With respect to the cleaning of the wall and floor tiles in the bathroom, I note the Landlord failed to provide photos, but the Tenant provided a photo of the tiles, and I can see that dirt accumulating in the grout of the tiles. I am not satisfied the Tenant sufficiently cleaned this before she left, and I award the costs for cleaning the tiles. With respect to steam cleaning of the mattress and the area rug, I find there is insufficient evidence to show the stains were not pre-existing. I note this is a furnished rental. However, there is no reliable evidence showing what the condition was at the start of the tenancy. As such, I decline to award bed or area rug steam cleaning costs. I award \$350.00, plus GST, totalling \$367.50.

5) \$30.00 – Hangers

The Landlord withdrew this item.

6) \$910.54 – Microwave replacement

With respect to this item, I find there is insufficient evidence showing what the condition of the microwave was at the start of the tenancy, given the condition inspection report is not reliable. I find the Landlord has failed to establish that it was the Tenant who caused the damage, since the Tenant denies doing it. I dismiss this item, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was somewhat successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution.

The Landlord is awarded \$872.61, as above. The Landlord may retain this amount from the security deposit, and must return the balance, \$188.28.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$188.28**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: July 21, 2023

Residential Tenancy Branch