



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

The Landlord seeks compensation under the *Residential Tenancy Act* (the “Act”).

Procedural History

The matter was first heard before another arbitrator on March 13, 2023. The arbitrator adjourned the application to give the parties an opportunity to properly serve evidence (see Arbitrator C. Wilson’s Interim Decision of March 14, 2023).

The parties attended a hearing before me on June 30, 2023, and confirmed that evidence was successfully served and exchanged.

Issue

Is the Landlord entitled to compensation?

Evidence and Analysis

In reaching this decision, I have considered only the necessary and relevant evidence needed to resolve the issue of the dispute and to explain the decision.

The tenancy began on August 1, 2022, and ended on October 31, 2022. Monthly rent, which was due on the first day of the month, was \$3,600. The Tenant paid a \$1,800 security deposit, which is currently held trust by the Landlord pending the outcome of this application.

The Landlord sought \$96.33 in compensation for unpaid hydro. The Tenant's agent (hereafter the "Tenant") did not dispute this amount.

The Landlord also sought \$359.90 in compensation for "Permanently stained and/or irreparably torn linens" and for a display bowl, for a tea towel. The Tenant did not dispute this amount.

Last, the Landlord sought \$900.00 in compensation for the following (as described by the Landlord in their application and reproduced as written):

Final cleaning to ensure my new tenants would move into a fully cleaned apartment as the MeeT team had (coordination + cleaners): \$170 Two unsuccessful walk-throughs: \$150 Hand scrubbing, soaking, cleaning duvet cover to see if MeeT could be saved replacement cost: \$50 Shopping trip to replace destroyed linens: \$50 4 days lost rental from incomplete changeover (discounted price negotiated with new tenant): \$480

The Tenant disputed this final portion of the claims. Both parties provided considerable testimony regarding this claim and their varying perspectives and expectations surrounding the final days of the tenancy.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

To determine if a party is entitled to compensation, the following four-part test must be met: (1) Did the respondent breach the Act, the tenancy agreement, or the regulations? (2) Did the applicant suffer a loss because of this breach? (3) Has the amount of the loss been proven? (4) Did the applicant take reasonable steps to minimize their loss?

Section 37 of the Act requires that when a tenant vacates a rental unit, they must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The Act does *not* require a tenant to return a rental unit to the landlord in the same condition as it was at the start of the tenancy.

Where a landlord seeks compensation due to an alleged breach of section 37 of the Act the onus falls on that landlord to provide sufficient evidence of the state and condition of the rental unit at the start and end of the tenancy. There is no evidence before me establishing the state and condition of the rental unit at the start of the tenancy.

More definitive, however, is that there is no completed condition inspection report. All landlords must complete a condition inspection report both at the start, and at the end, of a tenancy. This was not done. See sections 23, 24, 35, and 36 of the Act.

Why any of this is important is because section 21 of the *Residential Tenancy Regulation*, B.C. Reg. 234/2006, states that

In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this dispute, in the absence of any such evidence, including most importantly a condition inspection report, I cannot conclude on a balance of probabilities that the Landlord has proven a breach of section 37. In the absence of any breach, no compensation may flow. As such, this aspect of the Landlord's application for compensation is therefore dismissed.

Because the Landlord was only partly successful in this application, they are awarded half of the cost of the application fee pursuant to section 72 of the Act.

In total, the Landlord is awarded \$506.23.

The Landlord may retain this amount from the Tenant's security deposit and must return the balance (\$1,293.77) to the Tenant within 15 days of receiving a copy of this decision. A monetary order in this amount is issued with this decision to the Tenant.

Conclusion

The Landlord's application is granted, in part.

The Landlord is awarded \$506.23, and the Tenant is entitled to the return of \$1,293.77 of their security deposit.

Dated: July 1, 2023