



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 9, 2022, wherein the Landlord sought monetary compensation from the Tenant in the amount of \$5,769.09 for cleaning and repairs to the rental unit, recovery of the filing fee, and authority to retain their security deposit towards any amounts awarded.

The hearing of the Landlord's Application was scheduled for teleconference at 1:30 p.m. on August 21, 2023. Only the Landlord's Agent, D.C. and her assistant, A.T., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:56 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Agent testified that on November 24, 2022, they served the Tenant by regular mail to a post office box used by the Tenant at the time they applied for tenancy. The Agent further testified that they sent the documents to the Tenant by email on November 25, 2022. The Agent confirmed that they regularly communicated by email during the tenancy and that the Tenant sent communication as late as October 28, 2022, regarding their intended move out date of November 1, 2022 such that the Agent was confident the Tenant used the email address to which the hearing package was sent.

On December 15, 2022, the Landlord obtained an Order for substituted service from the Branch permitting the Landlord to serve the Tenant by email. In support of that Application the Landlord provided a copy of the November 25, 2022 email to the Tenant containing their application materials.

Residential Tenancy Policy Guideline 12—Service Provisions provides that documents served this way are deemed served three days later; accordingly, I find the Tenant was duly served as of November 28, 2022 and I proceeded with the hearing in their absence.

The Landlord's Agents were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. They confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord be authorized to retain the security deposit towards any amounts awarded?

Background and Evidence

The Agent confirmed this tenancy began April 1, 2021. The monthly rent was \$2,230.00 and the Tenant paid a security deposit in the amount of \$1,100.00. The tenancy ended on October 31, 2022.

The Landlord claimed the Tenant failed to clean the rental unit as required such that the Landlord incurred the costs to repair and clean the unit, as well as suffered a loss of rent as the unit could not be re-rented until those repairs and cleaning were completed.

The Landlord filed a Monetary Orders Worksheet which detailed the amounts estimated to repair the unit as well as the loss of rent. The total estimated losses as set out in this document were \$5,669.09.

During the hearing before me, the Agent testified as to the actual costs as following:

Item	amount
Cleaning - unit required 2 professional cleanings. One for hygienic reasons (rabbit feces and fruit flies) and a final move-out clean	\$651.00
Carpet cleaning - professional steam clean of stairs and upper level	\$183.75
Flooring - replace damaged main floor carpet	\$2,000.00
Bathroom door damaged (large gash in door)- replace -	\$274.71
Closet Doors replace 2 damaged	\$313.96
Front Door damaged (the door was ripped off the opening arm)	\$206.03
Painting - 1/3 cost due to damages throughout discounted due to "normal wear and tear"	\$850.31
Loss of rent - unable to list or rent unit due to condition and damages. \$74.33 per day November 1-15.	\$1,189.28
Move out fee	\$250.00
TOTAL CLAIMED	\$5,919.04

The Agent testified that the Tenants had rabbits in the rental unit which left feces on the carpet and floors; some of the flooring could be cleaned while other flooring had to be replaced.

The Tenants also damaged the doors, one had what looked like a hole from punching and the other was ripped off the opener.

The Landlord also painted the entire rental unit, however in the claim before me the Landlord only claimed 1/3 of this cost as it is their practice to repaint every 2-3 years in any case.

The Landlord also sought loss of rent in the amount of \$74.33 per day from November 1-15 as the unit was not able to be re-rented. The Agent confirmed they were able to re-rent the unit for \$2,700.00 per month.

In support of the claim the Landlord provided photos of the rental unit as well as estimates for the anticipated work and invoices for the actual cost of the cleaning and repairs.

Analysis

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (2) When a tenant vacates a rental unit, the tenant must
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After consideration of the Landlord's undisputed evidence and the testimony of the Agent, I find the Landlord is entitled to compensation for the amounts claimed. I am satisfied the Tenant failed to maintain reasonable health, cleanliness and sanitary

standards throughout the rental unit and failed to leave the rental unit reasonably clean and undamaged. I accept the Landlord's submissions that the rental unit required additional cleaning and repairs due to the damage caused by the Tenant's animals as well as the actions of the Tenant or their guests. Due to the extensive cleaning and repairs required I find the Landlord was not able to rent the unit by November 1, 2022 and suffered a loss of rent until the unit was re-rented on November 15.

I am satisfied the Landlord suffered the financial losses as claimed and award the Landlord compensation in the amount of \$5,919.04, as detailed by the Landlord's Agent during the hearing. I also award the Landlord the \$100.00 filing fee for a total award of **\$6,019.04.**

Pursuant to section 38 of the *Act*, I authorize the Landlord to retain the Tenant's \$1,100.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order in the amount of **\$4,919.04.**

Conclusion

The Landlord's request for monetary compensation from the Tenant is granted. The Landlord may retain the Tenant's security deposit towards the amounts awarded and is granted a Monetary Order for the balance due. The Landlord must serve the Order on the Tenant and may file and enforce it in the B.C. Provincial Court (Small Claims Division).

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: August 31, 2023

Residential Tenancy Branch