



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNRL-S, MNDL-S, MNDCL-S, FFL
 MNSDS-DR, FFT

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application, filed November 4, 2022, the Landlord sought monetary compensation from the Tenant in the amount of \$4,000.00 for unpaid rent, repairs to and cleaning of the rental unit, additional rent for an additional occupant and recovery of the filing fee. The Landlord also sought authority to retain the Tenant's security deposit towards any amounts awarded. In the Tenant's Application he sought return of his security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on August 15, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

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

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. 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. What should happen with the Tenant's security deposit?
3. Should either party recover the filing fee?

Background and Evidence

The Landlord testified as follows.

- The tenancy began November 1, 2020.
- The parties conducted a move in condition inspection on October 27, 2020.
- The Landlord claimed that the rental unit was essentially "brand new" as it had been fully renovated by the Landlord and finished the day before the tenancy began.
- Rent was \$2,100.00 per month.
- The tenant paid a security deposit in the amount of \$1,050.00, which the Landlord continues to hold.
- The tenant moved out October 31, 2022.
- The Landlord did not issue a 2 Month Notice to end tenancy for Landlord's use and the Tenant moved out on his own accord.
- The Tenant failed to pay the October rent in the amount of \$2,100.00.
- The parties completed a move out condition inspection on October 31, 2022 at 1:00 p.m.
- In terms of the condition of the rental at the start of the tenancy, the Landlord testified that he noted that the rental unit was "brand new and never lived in" rather than completing each section with a check mark as the only option was "satisfactory" and the Landlord wanted to be clear it was better than satisfactory.
- In terms of the condition on move out the Landlord indicated the condition as being damaged and not clean.
- The Landlord claimed that the Tenant did not make any effort to clean as he was pressed for time and even left unwanted things in the driveway for the Landlord to take care of.

The Landlord claimed \$800.00 for cleaning and repairs. He stated that he had another tenant moving in and "had to get on it". The Landlord provided photos of the rental unit in support of his claim as well as a detailed breakdown of his time in written submissions.

The Landlord also claimed the sum of \$1,000.00 for an additional occupant who he says lived there for September and October 2022. In support he relied on clause 7 of the residential tenancy agreement which reads as follows:

Subject to clause 19, Additional Occupants, the tenant agrees that for each additional tenant or occupant not named in clause 1, 2, or 3 above, the rent will increase by \$500 per month. The landlord's acceptance of any additional tenant or other occupant does not otherwise change this Agreement or create a new tenancy.

The Landlord testified that the Tenant's girlfriend moved in all her furniture, had all her realtor signs there, had her car in the driveway every day and appeared to be living there full time.

The Tenant testified as follows.

He confirmed that he did not pay the October 2022 rent because he believed the Landlord had asked him to move out and he read on the RTB website that when a Landlord asks a Tenant to move out they are entitled to a free months rent.

In terms of the Landlord's claim for cleaning and repairs the Tenant claimed that the rental unit was "absolutely reasonably clean" and testified that he hired professionals who cleaned for 4 hours. In support the Tenant also submitted photos. He conceded that he forgot the door under the stove but otherwise the unit was clean. The Tenant failed to submit any photos, although he claimed he had copies showing the rental unit was left reasonably clean.

In terms of the Landlord's claim for \$1,000.00 the Tenant claimed he was unaware of that clause. In any event, he testified that his girlfriend was spending the night when his daughters were not there, but she did not live there full time and had another apartment. He stated that she may have stayed there more than 4 days a month, but she did not move in as she had her own apartment. He confirmed that his parenting time is half the time such that at most she would have been there 15 days. He also noted that they also spend a lot of time in Vancouver as the Tenant has an office there and a boat.

The Tenant further noted that the rental unit was not "brand new" as claimed by the Landlord. The Tenant submitted photos of the rental unit bathroom that had black mold and a plastic sheet

In reply, the Landlord confirmed that bathroom was not renovated, as he did not replace the tub surround. He stated that the original rent was \$2,650.00 and he agreed to reduce the rent to \$2,100.00 as recognition of the condition of the bathroom.

The Landlord stated that the Tenant's claim that he had cleaners there for 4 hours is false as the Landlord was there that morning and there were no cleaners.

Analysis

After consideration of the testimony and evidence before me, and on a balance of probabilities I find the following.

I find the Tenant was obligated to pay rent in the amount of \$2,100.00 per month pursuant to the residential tenancy agreement. The evidence confirms the Tenant failed to pay rent for the month of October 2022.

The Tenant stated that he did not pay rent for October as he believed he was entitled to a free months' rent as the Landlord had asked him to vacate the rental unit.

The parties agreed that the Landlord did not issue a formal 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49 of the *Act*. As discussed during the hearing, a tenant who receives such a formal notice is entitled to a free months' rent pursuant to section 51(1), however, the 2 Month Notice to End Tenancy for Landlord's Use *must be in the approved form* pursuant to section 49(7) and 52 of the *Act*; there is no flexibility with respect to these requirements.

The Landlord denied asking the Tenant to move from the rental unit. However, even in the event the Landlord made such a request, and even in the event the Tenant acted on a verbal request from the Landlord, this does give rise to compensation pursuant to section 51(1) of the *Act*. As such, the Tenant had no legal authority to withhold his October 2022 rent. I therefore award the Landlord compensation in the amount of **\$2,100.00** for the October 2022 rent.

The Landlord also sought compensation in the amount of \$800.00 for cleaning, repairs and repainting of the rental unit.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on

the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

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.

I find the Tenant failed to leave the rental unit reasonably clean and undamaged as required by section 37. I am persuaded by the photos submitted by the Landlord that the Tenant left personal items requiring disposal by the Landlord, failed to clean the stove, blinds, oven and washing machine, and damaged the walls such that repairs and repainting was required. Based on these photos I find it unlikely the Tenant hired professional cleaners to do a thorough move out clean, and in the event he did, they did not complete the cleaning as required.

In written submissions the Landlord detailed this portion of his claim as follows: he claimed \$40.00 an hour for cleaning at 7 hours for a total of \$280.00 and \$50.00 an hour for painting at 8 hours for a total of \$400.00. He also claimed \$700.00 for repairing the scratches in the hardwood floor and \$30.00 to replace lightbulbs. The total of these amounts is \$1,410.00. During the hearing the Landlord confirmed he only sought the sum of \$800.00 for all his time associated with the above. I am satisfied this is a reasonable request based on the photos submitted by the Landlord and the condition of the rental unit. I therefore award the Landlord this requested **\$800.00**.

The Landlord also sought the sum of \$1,000.00 representing additional rent charged for the Tenant's girlfriend living at the rental unit. The Tenant testified that his girlfriend did not live with him, but stayed over when his daughter was not with him, such that she was not there at least half of the time. He further testified that he and his girlfriend frequently stayed in another city for work purposes as well as to enjoy their boat such that even when his daughter was with the other parent they were not at the rental unit.

On balance, I find the Landlord has failed to submit sufficient evidence to support a finding that the Tenant's girlfriend was an additional occupant or tenant as contemplated by the tenancy agreement. I find it more likely she was an occasional guest. I therefore find the Landlord is not entitled to claim additional rent for the Tenant's girlfriend.

As the Landlord has been partially successful, I award the Landlord recover of the **\$100.00** filing fee.

Conclusion

The Landlord is entitled to the sum of **\$3,000.00** for the following:

October 2022 rent	\$2,100.00
Cost to clean, repair and repaint rental unit	\$800.00
Filing fee	\$100.00
TOTAL AWARDED	\$3,000.00

Pursuant to section 38 of the *Act*, I authorize the Landlord to retain the Tenant's \$1,050.00 security deposit towards the amounts awarded and I grant the Landlord a Monetary Order for the balance due in the amount of **\$1,950.00**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

As I have authorized the Landlord to retain the Tenant's security deposit I dismiss his claim, including his request for recovery of the filing fee, without leave to reapply.

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 30, 2023

Residential Tenancy Branch