



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 13, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord and the Tenant attended the hearing and provided affirmed testimony.

The Landlord testified that the Notice of Dispute Resolution Proceeding package was served on the Tenant by email. The Tenant acknowledged receipt of these documents. Pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The Tenant testified that she did not serve any documentary evidence in response to the application. Therefore, as they were not served on the Landlord in accordance with the Act, I find that the documents submitted to the Residential Tenancy Branch Dispute Management System have not been considered in reaching a decision. However, even if they were considered, I find they would have no impact on the outcome.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for the cost to repair damage that the Tenant, their pets or their guests caused during the tenancy?
2. Is the Landlord entitled to retain the security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on November 1, 2012, and ended on September 30, 2022. During the tenancy, rent of \$1,654.00 per month was due on the first day of each month. The Tenant paid a security deposit of \$950.00, which the Landlord holds.

The Landlord's claim is described in the application and in a Monetary Order Worksheet dated October 13, 2022.

The Landlord's claims were supported by a Condition Inspection Report. The report shows that the move-in inspection took place on October 1, 2012. Although the Landlord testified a move-out condition inspection took place, a copy was not provided.

First, the Landlord claims \$2,649.10 for the cost to paint the rental unit. The Landlord testified the unit was "immaculate" when the Tenant moved in. In support of the condition of the rental unit at the end of the tenancy, the Landlord submitted photographs depicting scuffs on the walls and trim, picture holes, and minor damage. The Landlord also testified that the walls needed to be painted because the Tenant kept a pet in the rental unit, which was not permitted. The Landlord testified the smell of the pet permeated the walls. The Landlord testified the amount claimed was based on a quote dated October 11, 2022, a copy of which was submitted into evidence. Although the Landlord did not submit documentary confirmation of payment, he testified he paid this amount.

In reply, the Tenant testified that the Landlord never maintained the rental unit and suggested that a landlord is required to paint every 4-5 years. The Tenant testified that she tried to fix holes and that the Landlord was happy about everything at the end of the tenancy. The Tenant also testified that she did not keep a pet in the rental unit due to allergies. However, the Tenant acknowledged her mother would bring her dog when she came to visit, roughly 1-2 times per week.

Second, the Landlord claims \$3,497.32 for the cost to replace carpet in the rental unit. The Landlord testified there was a stain in the carpet and pet hair that he could not get out. Pictures of the carpet, and of the brushes on a carpet cleaner, were submitted in support. They show some staining and what appears to be hair and lint in the carpet cleaner. The Landlord repeated that pets were not permitted in the rental unit. The amount sought is based on a quote dated October 6, 2022, a copy of which was submitted into evidence. Although the Landlord did not submit documentary confirmation of payment, he testified he paid this amount.

In reply, the Tenant testified she lived in the rental unit for 10 years. She asserted that the photographs of the carpet show normal wear and tear, although she acknowledged a juice stain on the carpet. As noted above, the Tenant denied keeping a pet in the rental unit as she is allergic to dogs. However, she confirmed that her mother would bring her dog to the Tenant's unit roughly 1-2 times per week.

Third, the Landlord claims \$44.79 for the cost to replace track lighting in the rental unit. Pictures of a fixture hanging from the ceiling were submitted in support. The Landlord testified the lighting was replaced but did not submit a receipt in support.

In reply, the Tenant testified that the track lighting was not working a year into the tenancy and so she left it as it was.

Fourth, the Landlord claims \$200.00 for the cost to repair and clean four blinds in the rental unit. Pictures of the blinds, taken at the end of the tenancy, were submitted in support. One photograph depicts a damaged blind, but it is unclear which of the four sets of blinds is shown. The Landlord testified that he took four sets of blinds to a company to be repaired and cleaned at a cost of \$50.00-\$60.00 per blind. The Landlord did not submit a receipt.

In reply, the Tenant testified again that she lived in the rental unit for ten years. The Tenant stated the blinds were not working properly at the beginning of the tenancy and that this is reflected in the move-in condition report.

Fifth, the Landlord claims \$352.80 for the cost to clean the rental unit at the end of the tenancy. In support, the Landlord submitted photographs depicting the interior of the rental unit. The pictures show dirty walls and trim, dirty carpeting, and a dirty fridge, stove, and kitchen floor. The Landlord testified the amount claimed was based on a

quote. He testified that he paid someone to do some of the cleaning but did the rest himself. A receipt was not submitted in support of this aspect of the claim.

In reply, the Tenant acknowledges she didn't clean the oven but cleaned the rest of the unit as best she could.

Finally, the Landlord seeks to recover the \$100.00 filing fee paid to make the application, and requests an order permitting him to retain the security deposit in partial satisfaction of the amount claimed.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the Act empowers the director to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden of proving their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss because of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$2,649.10 for the cost to paint the rental unit, I find there is insufficient evidence before me to grant the relief sought. Based on the photographic evidence submitted, I find it is more likely than not that the relatively minor wall damage was caused by normal wear and tear. I have also considered the useful life of interior paint as set out in Policy Guideline #40 – four years – and accept that the rental unit was not repainted during the ten-year tenancy. Therefore, I find that this aspect of the Landlord's application is dismissed without leave to reapply.

With respect to the Landlord's claim for \$3,497.32 for the cost to replace carpeting in the rental unit, I find there is insufficient evidence before me to grant the relief sought. Specifically, I find there was insufficient evidence before me to conclude the Landlord took reasonable steps to minimize his losses. For example, the Landlord did not submit documentary evidence showing the carpets were professionally cleaned, which may have addressed the juice stain at a much lower cost than full replacement. I am also mindful of the useful life of carpeting as set out in Policy Guideline #40 – ten years – and accept the Landlord's testimony that the carpeting was original to the rental unit. Therefore, I find that this aspect of the Landlord's application is dismissed without leave to reapply.

With respect to the Landlord's claim for \$44.79 for the cost to replace track lighting in the rental unit, I find there is insufficient evidence before me to grant the relief sought. While the Landlord testified that the track lighting was replaced, a receipt to confirm the value of the Landlord's loss was not submitted into evidence. Therefore, I find that this aspect of the Landlord's application is dismissed without leave to reapply.

With respect to the Landlord's claim for \$200.00 for the cost to repair and clean blinds, I find there is insufficient evidence before me to grant the relief sought. I accept the Tenant's testimony, supported by the move-in condition inspection submitted by the Landlord, that the living room blind was not working properly at the beginning of the tenancy. In addition, I find there is insufficient evidence of the value of the loss incurred by the Landlord. He merely testified that he paid \$50.00-\$60.00 for each set of blinds but did not submit a receipt in support. Therefore, I find that this aspect of the Landlord's claim is dismissed without leave to reapply.

With respect to the Landlord's claim for \$352.80 for the cost to clean the rental unit at the end of the tenancy, I find there is sufficient evidence before me to grant the relief sought. Photographs taken at the end of the tenancy depict dirty walls and trim, dirty carpeting, dirty oven and fridge, and a dirty kitchen floor. I find the Tenant did not leave the rental unit "reasonably clean" as required under section 37 of the Act. I also find that the amount claimed is reasonable in the circumstances. I find the Landlord is entitled to a monetary award of \$352.80.

Having been partially successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstances that the Landlord be permitted to retain \$452.80 (\$352.80 + \$100.00) from the security deposit in satisfaction of the claim. In accordance with Policy Guideline #17(C)(1), I order that the balance of \$497.20 (\$950.00 - \$452.80) must be returned to the Tenant forthwith.

Pursuant to section 67 of the Act, I find the Tenant is entitled to a monetary order in the amount of \$497.20.

Conclusion

The Tenant is granted a monetary order in the amount of \$497.20. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 26, 2023

Residential Tenancy Branch