



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for compensation for damage caused by the Tenant, their pets or guests to the unit, site or property, holding security deposit; and for compensation for monetary loss or other money owed, holding security deposit, and to recover the cost of his filing fee.

The Tenant and an agent for the Landlord (the "Agent") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party; I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence.

Preliminary and Procedural Matters

The Tenant provided his email address and the Agent his mailing address at the outset of the hearing and confirmed their understanding that the decision would be sent to both Parties at these addresses.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- Is the Landlord entitled to recovery of the cost of the filing fee under section 72 of the *Act*?

Background and Evidence

According to the Parties in the hearing, this month to month tenancy of an apartment began on July 6, 2018, with a monthly rent of \$560.00 (including \$10.00 parking), due on the first of each month. The Tenant paid a security deposit of \$275.00, but no pet damage deposit.

In the hearing, the Agent said that the Tenant gave notice of the end of the tenancy on December 6, 2018, for a vacancy date of January 1, 2019. The Tenant agreed that he gave the Landlord this written notice of the end to the tenancy. The Agent said that this was improper notice, that it should have been one month's notice given at the end of November 2018 for a January 1, 2019 vacancy date. He said that since the Tenant did not give proper notice, that the Landlord was owed an extra month in rent, as the effective date of the Tenant's notice should have been the end of January 2019.

The Tenant said that the reason he moved out was because he was starting to get bitten by bed bugs. He said the Agent had the unit sprayed a couple of times, but that he kept getting bed bug bites. The Tenant said: "I thought I could leave at any time, given that it wasn't habitable - due to the living conditions. I would have got it to him sooner, but I was waiting for a place. One finally became available in December."

The Agent said that the Tenant left the rental unit dirty throughout. He said the Tenant is responsible for cleaning and that "he just wiped off the counters and the stove and that's all." The Parties agreed that they had "nasty argument" about the cleanliness of the rental unit on January 2, 2019.

The Tenant said:

When I moved in on the 6th, the place was dirty. I contacted Mr. [T.] on the 31st [of December] for a final inspection and to give him the keys. He was showing the apartment and he wasn't feeling well. I said to please call me when you are available on January 2nd. The first thing he said, is 'we don't give back security deposits'. He also said that this was dirty and that was dirty. I told him I'd get a mop and a broom and address these problems, whatever you would like. But he's right, we had an argument I returned the keys and left.

The Agent submitted a timesheet saying that he spent 10 hours cleaning the entire apartment on January 7, 2019. In the hearing, he said they charge \$25.00 per hour for cleaning. He said there were other damages, but they are only seeking compensation for the cleaning costs and the filing fee. He said they are also seeking a month's rent, because the Tenant gave insufficient notice of the end of the tenancy, and that his total claim was \$900.00.

The Agent uploaded a copy of a condition inspection report ("CIR") that the Parties completed at the beginning and the end of the tenancy. It indicated that the rental unit was dirty throughout, which was consistent with the photographs the Landlord submitted.

At the bottom of the CIR, the Tenant gave his forwarding address; however, he had neglected to include the unit number of his new address. The Agent said that the Tenant called him on January 17, 2019, and left a voicemail message with the unit number to complete his written forwarding address. The Tenant agreed with this.

The Agent said that in the move-in CIR, he marked the damage to rental unit, including that the refrigerator was scheduled for repair or replacement. Regarding the move-out CIR, the Agent said: "I noted that the kitchen light was pulled from the ceiling, but I didn't charge him for this. He had turned up the fridge to the max which destroyed it. The repairman said you can't prove it either way, so I'm being fair in just asking for cleaning costs and the late notice." The Agent said that the refrigerator was about "5 – 10 years old".

The Agent said he had to wait several weeks to re-rent it, because it needed a thorough cleaning.

The Agent submitted photographs showing that he had to clean the:

- Bathroom faucet,
- Window sills,
- Kitchen faucet,
- Upper kitchen cupboards,
- Behind the stove,
- The refrigerator,
- Around the toilet,
- The baseboard heater,
- Under the stove elements, and

- Items left in a drawer.

The Tenant said that he did not turn the refrigerator up to the maximum setting. He said that the light fixture was in the same condition as when he moved in. The Tenant said the rental unit was not clean when he moved in.

The Parties agreed that the move-out CIR was completed on January 2, 2019. The Tenant signed that he participated in the move-out inspection, but that he did not agree that the report fairly represented the condition of the rental unit, although he did not specify any reasons for his disagreement.

The Agent said: "He's right, he appeared to be getting bed bug bites and I brought in [a pest control company], which did two spray treatments. It's quite possible that Mr. [H.] brought them in with used furniture, but that's not relevant to the fact that he still gave late notice, so it doesn't matter either way."

Analysis

At the start and end of every tenancy a landlord and a tenant are required to perform an inspection of the rental unit together. The primary purpose of performing an inspection at the start and end of the tenancy is to record the condition of the property when the tenant takes possession and when possession is returned to the landlord.

Security Deposit

The tenancy ended on January 1, 2019, and the Tenant completed his forwarding address on January 17, 2019. Section 38(1) of the Act states the following:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Landlord was required to return the \$275.00 security deposit fifteen (15) days after January 17, 2019, namely February 1, 2019, or make an application for dispute resolution to claim against the security deposit, pursuant to Section 38(1). The Landlord applied to the RTB to claim against the deposit on January 20, 2019, so he was entitled to hold on to the security deposit in anticipation of this decision.

Based on the evidence before me, I find that the Landlord has complied with his obligations under the *Act* regarding the security deposit and condition inspection report.

Tenant's Notice to End Tenancy

According to section 45(1) of the *Act*, a tenant may end a periodic tenancy by giving the landlord notice that the effective date of the end of the tenancy is:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Accordingly, by giving notice of the end of the tenancy on December 6, 2018, the effective date for this notice should have been January 31, 2019, not January 1, 2019.

Section 53(2) of the *Act* states that if the effective date of the notice given by a tenant is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. As a result, I find that the effective date in this situation is January 31, 2019. As a result, I find that the Tenant owes, and I award the Landlord **\$550.00** rent for January 2019.

Claim for Compensation for Cleaning

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating a rental unit:

(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,...

Further, Residential Tenancy Branch Policy Guideline #1 ("PG#1"), clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property. PG#1 states:

The tenant must maintain 'reasonable health, cleanliness and sanitary standards' throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

...

An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Having reviewed the Landlord's photographs of the level of cleanliness in the rental unit after the Tenant had vacated the premises, I find that cleaning was necessary to bring the unit up to a reasonable level of cleanliness and sanitary standards. However, I find it unreasonable of the Landlord to having to spent 10 hours cleaning the rental unit; based on common sense and ordinary human experience, I do find that the amount of time spent cleaning the rental unit seems to be excessive, compared to similar cases of this type. Based on the evidence before me and similar cases, I find it more likely could have taken approximately half that time to clean the unit to a reasonable standard.

Therefore, I find that five hours of cleaning would have been more reasonable than the ten hours claimed by the Landlord. I award the Landlord **\$125.00 for cleaning costs** or 5 hours at \$25.00 per hour.

In terms of the Tenant's comments in the hearing, the condition of the rental unit at the beginning of the tenancy is not relevant to a tenant's obligations at the end of a tenancy. The Tenant could have applied for an order for the Landlord to comply with the Act, Regulation or tenancy agreement in terms of the cleaning the rental unit at the start of the tenancy. This applies to the bed bug problem, too; the Tenant could have applied

for a remedy to this problem, if the Landlord's efforts were insufficient to resolve the problem.

Given that the Landlord has been primarily successful in his Application, I award him recovery of his filing fee, as well, which he can deduct from the security deposit.

Based on the above, I find that the Landlord is entitled to compensation in the amount of \$775.00. As the Landlord's Application seeking retention of the Tenant's security deposit was filed within 15 days of the Tenant providing his complete forwarding address on January 17, 2019, I find that the Landlord may retain the \$275.00 security deposit as partial payment of the \$775.00 award.

Conclusion

Pursuant to section 67 of the *Act*, I order that the Landlord is entitled to compensation in the amount of \$775.00, which he is authorized to retain from the Tenant's security deposit as partial payment of this monetary award.

I order that the Landlord retain the security deposit of \$275.00 in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of \$500.00 in full satisfaction of this monetary award. The Landlord is provided with this Order in the above noted terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and 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: March 21, 2019

Residential Tenancy Branch