



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL MNDL-S**

Introduction

On October 22, 2019, an Arbitrator appointed pursuant to the Residential Tenancy Act ("Act") adjourned the landlord's Application for Dispute Resolution.

This hearing was reconvened to deal with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38.

The landlord attended the hearing and the tenant attended the hearing with her counsel, AT ("tenant"). Neither party took issue with a timely service of documents.

Preliminary Issue

The landlord advised the arbitrator at this hearing that she has provided evidence to support a claim for an oil stain in the parking lot. She did not file an amendment to her claim seeking an additional monetary order. I declined to allow this claim as the landlord had not filed an amendment in accordance with Rule 4 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled to:

- Authorization to recover the filing fees from the tenant pursuant to section 72;
- A monetary order for damages or compensation pursuant to section 67;
- A monetary order for damages to the rental unit and authorization to retain a security deposit pursuant to sections 67 and 38?

Background and Evidence

A copy of the tenancy agreement was provided as evidence by the landlord. The tenancy began on August 1, 2017 for a fixed one year term, becoming month to month at the end of the fixed term. Rent was set at \$2,200.00 per month payable on the first day of the month. A security deposit of \$1,100.00 was collected by the landlord which she continues to hold. The parties signed a 'Tenant Damage Agreement' at the commencement of the tenancy. Noted on the document are the following:

1. Crack on lower left front hall closet
2. Front hall closet is stiff to open/close
3. Slight leak in bathroom sink faucet – turn faucet to left stops leak
4. Microwave plate to be replaced.

The landlord provided the following testimony. The property is the landlord's previous residence, an apartment. The landlord does not know when the kitchen and bathroom were last painted but testifies they were in 'good' condition when the tenant moved in. The front room, hallway and living room were last painted around February 2015 when the landlord moved out. The bedroom was last painted by previous tenants between February 2015 and June 2017.

On May 2, 2019, the tenant served the landlord with a Notice to End Tenancy effective May 31, 2019. Although she did not receive a full month's notice, the landlord was able to secure new tenants to move in for June 1st. Prior to the tenant moving out, the landlord conducted a pre-inspection with the tenant and noted the unit was 'not terrible', but full of the tenant's belongings. She noted that there was pre-existing damage in the bedroom wall caused by the previous tenant but advised the tenant that there was a 2 x 4 piece of wood installed over the entrance that would have to be removed and repaired.

On May 31st, at approximately 6:00 p.m., the landlord's property manager, her sister went to the rental unit to do a move-out inspection. The following is noted on the 'Tenant Damage Agreement – Move out':

1. Walls require painting as excess spackling covers most walls and have not been painted over
2. Cupboards are not clean in all rooms
3. Bathroom is not clean and has mildew build up
4. Window sills are not clean
5. Kitchen, including sink and fridge and oven drawer are not clean
6. Windows are dirty
7. One big fob missing, One small fob inactive.

Both the property manager and the tenant signed the document on May 31st. The landlord testified she received the tenant's forwarding address by text message on Tuesday, June 4, 2019.

The landlord testified she was only given back one small fob that does not work, although the tenant was given 2 large ones and 2 small ones at commencement. The landlord testified that some were deactivated after the tenant reported a break-in where her fobs were stolen and that the strata charged the landlord \$150.00 for replacement fobs. Included in her evidence are an invoice from the strata, confirmation from the building manager indicating that deactivated fobs must be replaced and a receipt for the \$150.00 paid to replace the fobs.

The landlord testified that the rental unit was so badly damaged due to un-sanded holes, dirty carpets and unclean condition that her new tenants scheduled to move in on June 1st were unable to do so. Photographs of the rental unit at move out were provided as evidence by the landlord.

The landlord was unable to retain professionals to get the work done immediately, so her sister and her father cleaned the rental unit and performed the sanding of the spackle and repainting of the unit. Their invoices were provided as evidence, as was an estimate from professional cleaners and painters. The landlord testified that the unit was ready for move-in by June 2nd due to the immediate work done by her family members.

The landlord also provided screen shots of text messages with the new tenants dated May 31st, explaining the unit was not ready for move-in due to the painting being incomplete but offering to prorate their rent while they continued to work on it. The next tenants responded saying they were unable to move in until the following weekend and accepted the landlord would prorate the rent. The landlord seeks lost rent for one week in the amount of \$575.00.

The tenant provided the following testimony. When the tenancy began in 2017, she felt lucky to have found a place to live. There was pre-existing damage to the walls but both she and the landlord's sister acknowledged it was an older building and the damage was to be expected. She was told not to worry about the holes in the walls by the landlord's sister. The tenant testified she was OK with not noting it on the landlord's 'Tenant Damage Agreement'.

The rental unit was dirty and smelly and needed painting. The carpets were dirty and there was damage from a cat already there. During the tenancy, the tenant experienced an issue with cockroaches and she spent money to get rid of them. Her car was broken into and the fobs were stolen; the replacement fob she did get was not functioning perfectly. The tenant did not provide evidence regarding whether she advised the landlord of the non-functioning fobs. The tenant testified that the building manager deactivated the stolen fobs.

The tenant testified that when the landlord's sister came to do a condition inspection report with her, she was still in the midst of cleaning. The sister was angry with her, forcing her out of the unit while the job was incomplete. She offered to come back and paint and fix the walls she had put spackle on, but the landlord denied her the opportunity to do so.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove 1.) the existence of the damage/loss, 2.) that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, 3.) the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. The claimant must also show 4.) what steps were taken, if any, to mitigate the damage or loss.

Key Fobs

The parties agree that key fobs were stolen from the tenant's vehicle during the tenancy. The missing fobs were deactivated by the strata, requiring the purchase of replacement ones and the landlord has provided persuasive evidence to show she paid \$150.00 for them. The landlord has successfully shown she suffered a loss of \$150.00 during the tenancy stemming from the tenant losing the fobs. The landlord is awarded **\$150.00** pursuant to section 67 of the *Act*.

Cleaning and materials

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

This notion is further elaborated in Residential Tenancy Branch Policy Guideline PG-1 which 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* or Manufactured Home Park Tenancy *Act* (the Legislation). **(emphasis added)**

I have reviewed the photographs provided by the landlord to corroborate the claim for cleaning. I have also carefully reviewed the 'Tenant Damage Agreement' provided at move out. While the photographs show a suite that was left in a state that may not be described as "move-in ready", I find the unit was left reasonably clean and undamaged except for reasonable wear and tear. I decline to award the landlord a monetary award for cleaning.

Wall Repairs and Painting

While the tenant argues that there were existing holes and damage to the walls at the commencement of the tenancy, she testified she was 'OK' with not noting it on the 'Tenant Damage Agreement' because she and the landlord's sister both knew it was an older building. I find that the tenant did not exercise her right to make sure existing damage is noted at the commencement of the tenancy. The tenant has not shown a preponderance of evidence to the contrary, therefore pursuant to section 21 of the Residential Tenancy Regulations, the condition of the rental unit is as stated on the 'Tenant Damage Agreement', free of any damage to the walls.

Residential Tenancy Policy Guideline 1 (PG-1) provides guidance for the landlord and tenants' responsibilities. The guidelines for nail holes and painting are reproduced below:

NAIL HOLES:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. **The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible.**

I find that the tenant damaged the walls during the tenancy by putting holes in the walls, spackling the holes and not sanding the walls at the conclusion of the tenancy. I find the landlord was required to repair, sand and repaint the walls due to the damage caused by the tenant.

The landlord provided invoices from her sister and her father who performed the work. Each of them charged an hourly rate of \$88.73 per hour and their hours total 20 hours of work together. I find 20 hours to perform the work reasonable, however as the average hourly rate in British Columbia for a painter is \$21.71 per hour, I find the rate excessive. I award the landlord 20 hours at \$22.00 per hour for a total of **\$440.00** for the labour to repair and paint the walls.

The landlord provided receipts from a building supply company to substantiate her claim for materials. I note that some items in the receipt are expenditures that could be kept and used beyond the time of the repairs such as the step stool and the long nose pliers. I award the landlord a total of **\$200.00** for the materials purchased for wall repairs and painting.

Additional Rent

The landlord has provided sufficient evidence to show the rental unit was not ready to move into due to the damaged, unpainted walls. She also testified that the rental unit was ready to move into by Sunday, June 2nd but the new tenants could not take possession until the following weekend. The landlord's texts show she was willing to prorate the rent.

I am satisfied that damage caused by the tenant led to the landlord suffering a loss of rent while the unit was being repaired and repainted. I do not accept that the tenant should be held liable for the entire week's rent while the new tenants could not move in on Sunday, June 2nd. I award the landlord 2 days rent, calculated at \$2,200.00/30 days x 2 days = **\$146.66**.

Filing Fee

As the majority of the landlord's claim was successful, I award the landlord \$100.00 to recover the filing fee.

Security Deposit

The tenancy ended on May 31st and the landlord testified she received the forwarding address on June 4th. The landlord filed an Application for Dispute Resolution Proceedings to retain the security deposit on July 8th.

Section 38(1) of the *Act* states:

Return of security deposit and pet damage deposit

- (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,
 - c) the landlord must do one of the following:
 - d) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - e) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that landlord has not returned the security deposit to tenant within 15 days of receiving the forwarding address or made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from tenant. Accordingly, I find that landlord has failed to comply with her obligations under section 38(1) of the *Act*.

Section 38(6) of the *Act* sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

If a landlord does not comply with subsection (1), the landlord

- a) may not make a claim against the security deposit or any pet damage deposit, and
- b) must pay the tenant **double** the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I am required to order that she pay the tenant double the amount of the security deposit of \$1,100.00 for a total of **\$2,200.00**.

Item	Amount
Key fobs	\$150.00
Wall repair and painting – labour	\$440.00
Wall repair and painting – materials	\$200.00
2 days prorated rent (June 1 – 2, 2019)	\$146.66
Filing fee	\$100.00
Less security deposit (doubled)	(\$2,200.00)
Total	(\$1,163.34)

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,163.34.

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: November 14, 2019

Residential Tenancy Branch