



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The tenant has not provided any evidentiary material, and the landlord has provided a Proof of Service document indicating that all of the landlord's evidence was provided to the tenant by registered mail. The tenant did not dispute that the evidence was received, and all evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on February 12, 2021 and expired on February 28, 2022. A new tenancy agreement was signed by the

parties for another fixed term from March 1, 2022 to April 30, 2022, and then another was signed for May 1, 2022 expiring on February 28, 2023 at which time the tenant was to vacate the rental unit. The tenant vacated the rental unit on December 29, 2022.

Rent in the amount of \$2,000.00 was payable on the 1st day of each month, which was increased to \$2,030.00 on the latest tenancy agreement. Copies of the tenancy agreements have been provided for this hearing. On February 12, 2021 the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite, and the landlord's agent does not reside on the property.

Move-in and move-out condition inspection reports were completed, and copies have been provided for this hearing, which are in a digital format with photographs.

The landlord's agent further testified that the property was left in a very dirty condition at the end of the tenancy, and several light bulbs were not working. The tenancy agreement says that the tenant is to replace burned out bulbs. The landlord retained the services of Handy Services who replaced the bulbs, resealed a moldy gap around the kitchen sink, and cleared hair and such out of the drain of the clogged bathtub. When the move-in condition inspection report was completed, the parties made sure all light bulbs were working. A copy of the invoice has been provided for this hearing.

After 10 months of the tenancy the tenant said the dishwasher was leaking and requested that the landlord send a technician, who found that the leak was caused by a drain clogged with food. An Invoice dated December 17, 2021 was given to the tenant, but the tenant didn't pay it. A copy of the Invoice has been provided for this hearing.

The tenant had installed a group of mirrors on the living room wall without the landlord's consent. The Addendum to the tenancy agreement clearly states that a tenant cannot install any paintings or anything like that to a wall, and if they do, the owner's consent is required. At the end of the tenancy the landlord's agent found the large mirrors on the wall, and the tenant didn't remove them. Photographs have been provided for this hearing. The landlord seeks compensation only in the amount of \$560.00; the landlord obtained an estimate to repair the drywall and remove it, however a copy has not been provided for this hearing.

Also some stains were left on the carpet that could not be removed by carpet cleaners. Replacing it would be a huge cost, and the landlord seeks compensation of \$100.00.

The landlord has provided a Monetary Order Worksheet setting out the following claims, totaling \$1,858.08:

- \$927.75 for cleaning and repairs and light bulbs;
- \$270.33 for dishwasher repair;
- \$560.00 for removal of a mirror and drywall repair; and
- \$100.00 for stained carpet.

The tenant testified that when moving in, the tenant did his due diligence to keep the rental unit clean and not damage anything. The tenant had to do the detailed cleaning at the beginning of the tenancy. The rental unit was not ventilated well, and there was some mold on the carpet near the window and on the window. The tenant cleaned it and was concerned about his baby's health. It was an emergency to move in. It wasn't perfect, but the tenants had to sign and move in. Detailed cleaning was not done prior to moving in, and the stain on the carpet was not noticed.

The tenant informed the landlord about lack of cleaning issues. The tenant agrees to carpet cleaning and light bulbs, but not for detailed cleaning or handy man charges.

It is still not clear whether or not the mirrors are gone, or what that cost the landlord.

Analysis

Firstly, the *Residential Tenancy Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports and have compared them to the Invoices provided by the landlord.

Where a party makes a monetary claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlord claims \$927.75 for cleaning, repairs and light bulbs, carpet cleaning and "handy services." The Invoice in that amount is dated January 5, 2022.

The tenant does not dispute the light bulbs or carpet cleaning, but disputes the detailed cleaning, testifying that the tenant informed the landlord, but has not provided any evidence to substantiate that or what the landlord's response was. The tenant also testified that it was an emergency move-in, and I accept that, however the tenants had a responsibility to include in the move-in condition inspection report a notification that the rental unit was not clean. Instead, the tenant signed the move-in condition inspection report indicating that the tenant agreed that it fairly represented the condition of the rental unit. The tenant also signed the move-out portion of the condition inspection agreeing that the report fairly represented the condition of the rental unit, but did not agree to any deductions from the security deposit.

I find that the landlord has established the claim of \$927.75.

With respect to dishwasher repair, I have reviewed the Invoice from the technician which is dated December 17, 2021 which clearly states that the technician found blockage in a vent assembly in the door, cleaned it, tested it and advised to avoid "over-sudsing." The tenancy began on February 12, 2021, 10 months before the issue with the dishwasher. Therefore, I find that the tenant is responsible for the dishwasher bill amounting to \$270.33.

The landlord's agent testified that the landlord received an estimate for removal of the mirrors and drywall repair for \$560.00, but has not provided any evidence of that. I find that the landlord has failed to satisfy element 3 in the test for damages and I dismiss that portion of the landlord's application.

With respect to compensation in the amount of \$100.00 for stained carpet, there is no evidence before me to satisfy me that the carpet had not already reached its useful life, or that the landlord has satisfied element 3 in the test for damages. I find it to be arbitrary and not permitted by law.

Having found that the landlord has established the \$927.75 Invoice and the \$270.33 dishwasher repair Invoice, for a total of \$1,198.08, the landlord is also entitled to recover the \$100.00 filing fee from the tenant. I order the landlord to keep the \$1,000.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlord as against the tenant for the difference, in the amount of \$298.08. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division for enforcement.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the \$1,000.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$298.08.

This order is final and binding and may be enforced.

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: October 06, 2023

Residential Tenancy Branch