



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for damage to the unit, site or property, and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents separately on February 22, 2011 by registered mail, the tenants did not attend. All testimony and the evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on September 1, 2010 and ended on January 22, 2011. Rent in the amount of \$1,800.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$500.00. No move-in condition inspection report was completed.

The landlord testified that a hearing was conducted by a Dispute Resolution Officer on January 18, 2011 with respect to unpaid rent by the tenants. The landlord, at that hearing, was granted an Order of Possession and a monetary order for unpaid rent and utilities, and was permitted to retain the security deposit in partial satisfaction of that claim. The tenants moved from the rental unit as a result of that Decision, and did not leave a forwarding address with the landlord, and no move-out condition inspection was completed by the parties.

The landlord further testified that the rental unit rented by the tenants was actually two rental units, each with its own kitchen. The units were left in a state of disarray and damaged by the tenants, and the landlord provided photographs of the rental unit after the tenants had vacated. The photographs show food, clothing and garbage strewn throughout the rental unit. Some of the photographs appear as though the tenants dumped garbage on the carpets. Also evident in the photographs is a sink that contains garbage and debris and is extremely dirty, as well as home-made pipes, made from empty bottles and a kitty litter box containing cat feces.

The landlord further testified that the tenants left holes in the walls that required repair, as well as a door frame that was missing and required replacing, a broken light switch, broken blinds and a missing light fixture in a hallway. Also provided are receipts from Home Depot and Home Hardware that the landlord testified were for items purchased to repair the damages, however the landlord was not able to provide testimony on what some of the individual items were and the receipt contains acronyms or abbreviations. A janitorial invoice dated February 5, 2011 was provided for \$350.00 for changing a tap, repairing drywall, repair to a tub, changing door locks and repairing plumbing under the sink. Another receipt dated January 31, 2011 was provided for \$351.40 for replacing damaged outlets and switches, repairing a base board heater, and for installing a range hood fan. The landlord also provided a receipt dated January 28, 2011 in the amount of \$93.98 for paint and a sanding sponge, as well as a receipt dated January 27, 2011 for carpet cleaning in the amount of \$250.00. The landlord claims damages in the sum of \$1,789.05.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to prove a 4-part test:

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

The *Residential Tenancy Act* states that a landlord must conduct a move-in and a move-out condition inspection report, which I find were not conducted at move-in or at move out. The *Act* also states that the landlord's right to retain the security deposit for damages is extinguished if the landlord fails to complete those reports with the tenant.

In this case, the landlord has already been ordered to retain the security deposit for unpaid rent, and therefore, that application is not before me.

In the absence of a move-in or a move-out condition inspection report, it is difficult to ascertain what the condition of the rental unit was at the commencement of the tenancy in comparison to the condition at the end of the tenancy. The *Act* also requires the tenants to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The photographs provided show a very clear picture of the total disregard by the tenants of any care being taken to ensure the unit was left clean or undamaged. I accept the evidence of the landlord with respect to the damage and cleaning claims.

With respect to the amount of damages the landlord should be awarded, in the absence of any condition inspection reports, I have examined the photographs in comparison to the receipts provided, and I find that the landlord has clearly established a claim for the following:

- \$250.00 for carpet cleaning;
- \$350.00 for the janitorial invoice; and
- \$56.26 for a dead bolt, including HST.

I find that it is not possible to ascertain what the remaining items that appear on the receipts were or if any of those items relate to damages caused by the tenants, and therefore, I find that the landlord has failed to establish elements 2 or 3 of the 4-part test for damages for those items. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord, pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$706.26. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: May 18, 2011.

Residential Tenancy Branch