



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for unpaid rent, for money owed or compensation for damage or loss, and to recover the cost of the filing fee from the tenants.

Although each tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 9, 2011, the tenants did not appear at the hearing. The landlord supplied testimony of the tracking number to each tenant, testified that the mail was sent to the address at which the tenants resided and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenants' absence.

The landlord's agent appeared, gave affirmed testimony, and was provided the opportunity to present her evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary compensation sought under section 38, 67 and 72 of the Residential Tenancy Act (the "Act")?

Background and Evidence

This tenancy started on February 1, 2009, ended on July 31, 2011, monthly rent was \$1,450.00 and the tenants paid a security deposit of \$725.00 at the beginning of the tenancy.

The landlord's claim is \$875.60, which includes carpet cleaning of \$112.00, cleaning for \$154.00, cleaning materials of \$30.80, painting for \$336.00, painting materials for \$117.00, filling 2 holes for \$100.00, and furniture removal for \$179.20.

The landlord's evidence included photos of the rental unit, a security deposit refund work sheet, a move-in and move-out condition inspection report and the tenancy agreement.

In support of their application, the landlord's agent testified that the tenants vacated the rental unit dirty and in need of cleaning, painting, and repairing of the wall.

The landlord's agent testified that the cleaning of the rental unit took 11 hours.

Upon query, the landlord's agent stated that the documentary proof of payments and costs incurred was telefaxed into the Residential Tenancy Branch. However a search of the records did not reveal any receipt for the records. I note that all other documents sent into the Residential Tenancy Branch were delivered via registered mail.

The landlord's agent confirmed that the tenants' security deposit has not been returned to them, due to their application claiming against the security deposit.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

While I accept that the tenants left the rental unit in a state which required repainting and cleaning, I find the landlord submitted insufficient or any evidence to prove they sustained a loss, such as with receipts, invoices, or payments made. I therefore find that the landlord has failed to meet step 3 of their burden of proof and I **dismiss** the landlord's Application, without leave to re-apply.

As I have dismissed the landlord's application, I decline to award them the filing fee.

Conclusion

I **dismiss** the landlord's application, **without leave to reapply**.

I find the landlord filed an application for dispute resolution to claim against the tenants' security deposit within the time frame required under the Act. However as I have dismissed the landlord's application, I find the tenants are entitled to a return of their security deposit.

I therefore **direct** the landlord to return the tenants' security deposit of **\$725.00**.

I **grant** the tenants a monetary order pursuant to section 67 of the Act for the amount of **\$725.00**.

I am enclosing a monetary order for **\$725.00** with the tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 10, 2011.

Residential Tenancy Branch