



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for money owed or compensation for damage or loss and for damage to the rental unit, for authority to retain the tenant's security deposit and to recover the cost of the filing fee from the tenant.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, and make submissions to me.

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 a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act* and authority to retain the tenant's security deposit?

Background and Evidence

This tenancy originally began as a one year, fixed term, from September 1, 2009, through August 31, 2010. Thereafter the parties entered into a new, one year fixed term, from September 1, 2010, through August 31, 2011. I heard testimony that the tenancy ended on August 30, 2011.

Monthly rent was \$1,650.00 and the tenant paid a security deposit of \$825.00 at the start of the tenancy. The parties agree that the landlord has returned all but \$400.00 of the tenant's security deposit, which is the amount of the landlord's monetary claim. I find the landlord's application to retain the security deposit to be timely filed. Additionally, the landlord is seeking to recover the filing fee of \$50.00.

The landlord's relevant evidence included the 2 tenancy agreements, the move-in and move-out condition inspection report, an estimate from a flooring company for replacement flooring and photos of the rental unit taken the day of the inspection, according to the landlord's agent.

In support of their application, the landlord's agent submitted that the wooden floors were new at the start of the tenancy, and that during the course of the tenancy, the floors were damaged beyond normal wear and tear. The three floors in question were in the living room, kitchen and 2nd bedroom.

The landlord's agent stated that the cost of replacing the damaged floor was estimated to be \$3,415.16; however the landlord mitigated their loss by finding another tenant who agreed to rent the rental unit in that condition. The landlord's agent stated that it would be necessary to replace the floor eventually due to the damage and any costs recovered would go toward that expense.

The landlord's monetary claim is an estimate of replacing 50 square feet, received from the flooring company.

In response to the landlord's application, the tenant stated that the scratches were normal wear and tear, and that any scratches could be buffed out. The tenant denied making gouges in the floor, with the exception of the 2nd bedroom, and questioned the landlord's photographic evidence, stating that he could not ascertain the positioning of the photographer when taking the photo.

The tenant stated that the material used in the wooden floors was soft and of poor quality, contending that the same furniture he used in the rental unit, he now uses in his new rental unit, which had no scratches.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party 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. In this case, the onus is on the landlord to prove damage or loss.

In reviewing the landlord's evidence, while the photographic evidence does indicate scratches and marks to the floors in the certain rooms question (living room, kitchen and 2nd bedroom), I find the condition inspection report contradicts the landlord's testimony and claim.

For instance, the landlord claims damage by the tenant in the living room; however the move-in condition inspection report notes that there were scratches and marks at the start of the tenancy. Upon query, the landlord acknowledged that there were no photos of the living room floor at the start of the tenancy which would serve as a comparison for the change in condition. Due to the contradiction, I cannot conclude that the tenant damaged the living room floor.

Upon further review of the move out condition inspection report, the landlord's agent noted that the kitchen floor had normal wear and tear, which I find that the tenant is not responsible for under the Residential Tenancy Act. While the landlord's agent stated that the marking on the condition inspection report was a mistake, I cannot accept contradictory evidence as sufficient to meet the landlord's burden of proof.

As to the 2nd bedroom, I find the move out condition inspection report noted that the damage was beyond normal wear and tear. The tenant acknowledged that his son left the mark. I therefore find that the landlord has sufficiently established that the tenant damaged the 2nd bedroom floor beyond the extent allowed under the Act.

In arriving at the amount for damages to be awarded to the landlord, I find that the landlord sufficiently met their burden of proof of damage by the tenant to one of the three floors, that being the 2nd bedroom. I therefore have allowed the landlord **1/3** of their **monetary claim** of \$400.00, or the amount of **\$133.00**.

As the landlord was partially successful in their application, I have allowed them recovery of a partial filing fee, \$25.00.

Conclusion

I therefore find the landlord has established a **monetary claim** of **\$158.00**, comprised of damage to the 2nd bedroom in the amount of \$133.00 and recovery of a partial filing fee of \$25.00.

I allow the landlord to retain the amount of **\$158.00** from the tenant's partial security deposit they have held, \$400.00, in satisfaction of their monetary claim, and I **order** that the landlord return the balance to the tenant, in the amount of **\$242.00**.

Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of \$242.00 for the return of the balance of his security deposit.

I am enclosing a Monetary Order for \$242.00 with the tenant's Decision. This Order is a **legally binding, final Order**, and 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 25, 2011.

Residential Tenancy Branch