



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 the landlord's Application for Dispute Resolution for an order for monetary compensation for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The landlord, his spouse and the tenant 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 prior to the hearing, 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

Has the landlord established an entitlement to a monetary order pursuant to sections 38, 67, and 72 of the under the Residential Tenancy Act (the "Act")?

Background and Evidence

This month to month tenancy began on March 1, 2007, and ended on or about August 31, 2011, monthly rent started at \$750.00 and the ending monthly rent was \$850.00. The tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The landlord's monetary claim is in the amount of \$901.50, which includes kitchen repair in the countertop, oven cleaning, replacing the sliding door handle, carpet cleaning, replace front porch light, replacing window screens, re-skin furnace room door, replacing a used dolly, a home inspection after the tenancy ended, wiring, garbage clean-up and registered mail fees.

In support of his application, the landlord testified that prior to the tenant moving in, he spent about \$7,000.00 in repairs.

The landlord submitted that the tenant left the rental unit dirty and in disrepair, which will require repairing at some future point. The landlord pointed out that many of the screens were torn out and missing and that they did not notice this until a neighbour pointed the screens on the property.

Included on the list was a cost of a home inspection by their contractor after the tenant vacated the rental unit.

Upon query, the landlord submitted that none of the repairs or other items on his list for monetary compensation have been made or attended to, but will be addressed at some point in the future.

Upon query, the landlord could not state how old the screens were in the home, as they had been on the home for a long time.

There was no move-in or move-out condition inspection report.

In response, the tenant stated that there were no holes in the countertop when he left, only cigarette burns by a former tenant before he moved in, the tenant denied breaking the door handle, as it was already missing when he moved in, and that the screens were already torn off when he moved in.

The tenant submitted that he spent 4 days cleaning the rental unit when he moved in and that he made a number of repairs and did painting himself, all to bring the rental unit, an older house, to a comfortable standard of living for his family.

Analysis

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

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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

Section 23 and 35 of the Act requires a landlord to complete an inspection report in accordance with the Act and regulation and the landlord confirmed there is no completed condition inspection report in accordance with the Act and regulation. By operation of Section 24 and 36 of the Act the landlord's right to claim against the security deposit is extinguished.

I find that without proof of a move in or move out inspection or condition inspection report, most of the evidence consisted of disputed, verbal testimony. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail on a balance of probabilities. I also find in the absence of a condition inspection report, the landlord has not established the condition of the rental unit either before or after this tenancy and therefore I find that the landlord has **not** proven a monetary claim for the alleged damages to the rental unit.

Therefore I find that the landlord has not met his burden of proving a monetary claim against the tenant for the alleged damages to the rental unit.

I therefore **dismiss** his claim **without leave to reapply**.

Alternatively, had I not dismissed the landlord's claim for failure provide proof of damages by the tenant, I would still dismiss his claim for insufficient evidence of the value of the loss, which is step 3. The landlord acknowledged that as of the day of the hearing, he has not expended any sums for the alleged repairs.

Additionally, as to the replacement of the used dolly, the landlord did not submit any evidence that he was missing a dolly or the replacement value of the same.

As to the landlord's claim for a home inspection performed by his contractor and registered mail fees, landlords and tenants are entitled to recover costs for damages or losses that are directly related to breaches of the Act or the tenancy agreement, pursuant to section 67 of the Act. Costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is allowed under section 72 of the

Act. I find that I do not have authority to award any other costs related to dispute resolution proceeding and I therefore **dismiss** the landlord's claim to recover costs related to a home inspection or registered mail fees.

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

As I have dismissed the landlord's claim, under authority of Section 67 of the Act, I **direct** the landlord return the tenant's security deposit in the amount of \$375.00 forthwith and therefore I grant the tenant a **monetary order** in the amount of **\$375.00**.

I am enclosing a monetary order for \$375.00 with the tenant's 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 I fail to comply with this monetary order by transmitting the amount of \$375.00 to the tenant.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant is granted a monetary order in the amount of \$375.00.

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: December 13, 2011.

Residential Tenancy Branch