



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 to obtain a Monetary Order for damage to the unit, site or property, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to a Monetary Order for damage to the unit?

Background and Evidence

The parties agreed they entered into a verbal tenancy that began April 7, 2012. Rent was payable on the first of each month in the amount of \$640.00 and on April 8, 2012 the Tenant paid \$320.00 as the security deposit plus \$480.00 as rent for the remainder of April 2012. No move in condition inspection report was completed and no move out inspection report was completed. The Tenant provided the Landlord with his forwarding address in writing on April 14, 2012 when the tenancy ended and he vacated the property.

The Landlord asserts that the Tenant waived his right to a condition inspection report as he looked at the unit and said everything was fine. Their agreement included that the Landlord could enter the rental unit to complete her laundry as her machines were located inside the self contained suite. The Landlord stated that when she attempted to enter the suite to do laundry she found the door was being blocked so she pushed on it and opened it enough to get through it when she saw a wedge stuck under the door.

She advised that their relationship became antagonistic from that point onward and when she called 911 the operator could hear the loud banging that the Tenant was making. The Landlord advised she believes the Tenant was pounding the wedge under the door so hard that it caused the damage to the outside of the door. She is seeking to retain the security deposit of \$320.00 for the cost of the door plus \$6.00 for the cost of photographs. She noted the estimates she provided in evidence to have the door replaced and confirmed that she had it replaced with a door she borrowed from her son-in law. The Landlord was not able to confirm the age of the hollow birch door however she did confirm it was present when she purchased the house ten years ago.

The Tenant affirmed there were no inspection reports therefore the Landlord is not entitled to keep his deposit and said he did not waive his rights as he was never asked to conduct an inspection.

The Tenant confirmed he had placed a wedge under the door to protect his privacy so the Landlord did not enter unannounced while he was at home. He stated the Landlord knocked and then forced the door open with all of her weight and it was the Landlord who caused the damage to the door and not him. He stated that the Landlord should have gone outside to the other door to attempt to gain entry if she could not access through the interior door, instead she pushed her way in and caused her own damage, as supported by the Landlord's written submission.

The Landlord argued that the wedge was not under the door that much when she pushed the door open and that she did not cause the damage. She confirmed the damage was on the side of the door located in her suite and not inside the Tenant's suite.

The Tenant argued that he did not notice any damage to the door and noted that the Landlord forced this door open twice and therefore she caused the damage to this hollow door.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and

2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the evidence supports there was damage caused to the door which is located between the Landlord's suite and the Tenant's suite. However, there is disputed verbal testimony as to who caused the damage. Was it caused when the Landlord forced the door open with the wedge under it or was it caused when there was a loud banging noise coming from inside the suite when the Landlord was on the phone with 911?

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy by the Tenant's actions. Accordingly, the only evidence before me was disputed verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof.

Accordingly I find there to be insufficient evidence to prove the test for damage or loss, as listed above and I hereby dismiss the Landlord's claim for \$320.00 to repair the door.

Furthermore the Landlord extinguished her right to retain the security deposit for damage to the unit as she breached section 23 of the Act by not completing a condition inspection report form at the beginning of the tenancy and for not providing the Tenant a copy of the form in accordance with the Act.

The evidence supports that the tenancy ended April 14, 2012 and the Tenant provided the Landlord with his forwarding address on April 14, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than April 29, 2012. The Landlord filed her application late, on April 30, 2012.

Based on the above, I find that the Landlord has failed to comply with Sections 23 and 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states the landlord must pay the tenant double the security deposit.

Accordingly, the Landlord is hereby ordered to return double the Tenant's security deposit in the amount of **\$640.00**, plus interest of \$0.00 forthwith.

The Landlord has sought \$6.00 to cover costs for photos to support her claim. Photos are not an expense covered by the *Residential Tenancy Act* as they are a cost of doing business.

The Landlord has not been successful with her claim and therefore must bear the burden of the cost to make her application.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize herself with her rights and responsibilities as set forth under the *Residential Tenancy Act*. The Tenant declined my offer to send him the guide.

Conclusion

I HEREBY DISMISS the Landlord's application.

The Tenant has been issued a Monetary Order for the return of his security deposit in the amount of **\$320.00**. This Order is legally binding and must be served upon the Landlord.

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: June 18, 2012.

Residential Tenancy Branch