



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 under the Residential Tenancy Act (the "Act"), requesting a monetary order for damage to the rental unit, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, to review their documentary evidence submitted prior to the hearing 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.

Preliminary Matter:

The original hearing on the landlord's application was conducted on June 15, 2012; however the presiding Dispute Resolution Officer ("DRO") was taken ill and was placed on extended medical leave before being able to complete the Decision.

A representative from the Residential Tenancy Branch ("RTB") contacted the parties, explained the situation and secured the parties' agreement to proceed on the landlord's application with a trial de novo, or new hearing. This resulted in the present hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit, for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on June 1, 2009, the tenant moved out of the rental unit on March 24, 2012 and the tenant paid a security deposit and a pet damage deposit of \$675.00 each for a total of \$1350.00.

The parties agree that the landlord was provided the tenant's written forwarding address on March 26, 2012, at the move-out inspection and that the landlord has not returned any portion of the deposits to the tenant.

The landlord listed his monetary claim in the amount of \$1232.38. The landlord failed to provide particulars or a specific monetary breakdown for each item claimed; however I allowed the landlord to explain his claim in more detail, as follows:

Repair of interior deficiencies	\$364.30
HST for the above	\$43.72
Kitchen cabinet drawer repair	\$400.00
Materials	\$272.47
Total	\$1231.69 (differs from landlord's total)

The landlord's relevant evidence included the tenancy agreement, a condition inspection report, an invoice from the landlord's stucco company for repair of blinds and interior deficiencies, a handwritten invoice for the cabinet drawer repair and receipt for the materials, and copies of photos from the rental unit after the tenancy ended.

Landlord's testimony:

The rental unit was fully renovated in 2009, prior to the tenancy. The tenant caused damage to the kitchen drawers, walls which required sanding and repainting, shower enclosure door tracking and blinds. The damage required that the landlord make repairs.

There was damage to the front door, and although the tenant stated that someone had broken into the rental unit, the landlord did not believe him.

The tenant's dog caused the blind damage.

The landlord pointed to the condition inspection report and his photos as proof of the damage.

When questioned, the landlord confirmed that some of his various construction companies performed the repair work on the rental unit.

Tenant's testimony:

The tenant agreed that his dog chewed the blinds and that a bit of crown moulding by the bedroom door came off.

The tenant disagreed that he caused the door damage, and as proof of his contention, he informed the landlord in 2010 when it happened and the landlord never attended to the rental unit to repair the damage.

The kitchen cupboards were poorly installed, which caused them to crash down and damage the drawers and cabinet.

The tenant denied the glass damage.

The majority of the damage was the result of a leaking roof, of which the landlord was informed, but failed to repair for 9 months.

The tenant pointed to the landlord's receipts, one of which was a handwritten receipt and the other was primarily for door damage, which was caused by the break-in. The tenant further implied that the listing of materials purchased by the landlord could be for any of his construction jobs, as it was not specifically broken down for the rental unit.

Landlord's response:

There was no evidence of a break-in, but acknowledged that the tenant informed him of the break-in.

The cabinets were not poorly installed and pointed out that the cabinet top was fully intact, which meant the damage was from the tenant or his family.

Analysis

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

At the end of a tenancy the landlord is required to make an application claiming against the security deposit and pet damage deposit or return the deposits to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's written forwarding address on March 26, 2012, but did not file an application or return the security deposit and pet damage deposit within 15 days of that date.

If the landlord fails to comply with this provision, the landlord loses the right to claim against the deposits and must pay the tenant double the amount of the deposits. The tenant is therefore entitled to double the amount of his security deposit and pet damage deposit of \$675.00 each.

Even though the landlord lost his right to claim against the deposits, Residential Tenancy Branch Policy Guidelines still allow the landlord to make a claim for damages to the rental unit.

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, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, 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.

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

In the case before me, I cannot determine from the landlord's evidence that the landlord sustained a loss, which is the first step of his burden of proof. I find the receipt from the landlord's stucco company is not proof that the landlord incurred a loss and did not show proof of an actual payment for work performed. Likewise I cannot accept a handwritten receipt which contained no details of the alleged work performed.

I also cannot determine from the receipt from the home decorating store that the materials purchased were for the restoration or repair of the rental unit, given the nature of the landlord's ownership of several construction companies.

I also find the landlord could not prove to my satisfaction that the tenant did not suffer a break-in, and in any case, the alleged damage was over two years old, which I find shows that the landlord failed to take reasonable steps to mitigate his loss earlier.

A review of the invoices and receipts provided showed the same blue ink stamp, which marks the document "Paid," yet as to the landlord's companies, I saw no actual proof of payment. I cannot accept that the receipt from the home decorating store would contain the same mark, which I find called into question all of the landlord's evidence.

Due to the above, I find the landlord submitted insufficient evidence to support his burden of proof, with the exception of the blinds and the crown moulding on top of the bedroom door, which the tenant acknowledged damaging.

As there was no breakdown on the landlord's evidence as to the amount of time to replace a small portion of crown moulding on part of one door, I find the amount of \$50.00 to be reasonable from the \$364.30 total for remaining interior deficiencies.

As the landlord's application contained some merit, I allow the landlord to recover the filing fee of \$50.00.

Conclusion

I therefore find the landlord has established a total monetary claim of \$251.20, comprised of crown moulding replacement for \$50.00, blind replacement for \$151.20 and \$50.00 for the filing fee.

As I have found that the tenant is entitled to his security deposit of \$675.00, doubled, and his pet damage deposit, doubled, I find the tenant is entitled to a total monetary award of \$2700.00, less the amount of the landlord's monetary claim of \$251.20.

I direct the landlord to withhold the amount of \$251.20 from the tenant's monetary award of \$2700.00 to satisfy his monetary claim and I grant the tenant a monetary order in the amount of \$2448.80, for the balance due.

The monetary order for \$2448.80 is enclosed 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) for enforcement 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: July 23, 2012.

Residential Tenancy Branch