



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD and FF

Introduction

This hearing was convened on the landlord's application of May 15, 2012 seeking authorization to retain a portion of the tenants' security deposit in set off against damage to the rental unit and recovery of the filing for this proceeding.

As a preliminary matter, the landlord stated that she had received the tenants' substantial evidence package on July 10, 2012. It was received by the branch on July 9, 2012. I have considered the question of the late evidence against the Rule 11.5b) under the Rules of Procedure (prejudice to the other party) and have relied only minimally on that submission, particularly on the few photographs and one or two points directly pertinent to the landlord's claims.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award to be retained from the security deposit as requested.

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. The burden of proof falls to the applicant.

Background, Evidence and Analysis

This tenancy began on May 1, 2011 and ended on April 30, 2012. Rent was \$1,675 per month and the landlord held a security deposit of \$838 of which \$220 has been returned and \$618 retained by the landlord against damage to the rental unit claimed in the present application.

As a matter of note, the rental unit is one of five in a large home which the landlord stated was built in 1915 and converted the apartments in the 1980's.

The landlord and male tenant participated in the move-out condition inspection, although the male tenant declined to sign as he disagreed with the landlord's notations.

During the hearing, the landlord submitted evidence in support of the two claims on which I find as follows:

Replacement of butcher block countertop - \$558. This claim is made up of \$438 for purchase of the counter top and an estimated \$120 to install it. The landlord stated that she had advised the tenants at the end of the tenancy that the countertop had some markings on it from use and some deterioration due to water near the tap.

The tenants stated that the countertop was about the same as it was when they moved in to the suite except for perhaps more discoloration near the tap. Nevertheless, the male tenant stated that he spent two hours sanding it in an effort to satisfy the landlord. He stated that the landlord did not approve putting a protective coating on the wood as recommend by the seller. The landlord submitted a copy of the seller's web page describing the top and providing its price, but stated that she had not replaced it.

On the basis of the photographs submitted by the tenant which I accept were taken at the end of the tenancy, I can see no damage to the countertop that would warrant replacement. While the landlord challenged the tenant's photographs, she submitted none of her own from either the beginning or end of the tenancy.

I find that the landlord has failed to meet the burden of proof that the damage existed and that the amount she has claimed for remediation is reasonable. This part of the application is dismissed.

Repair gouges to wooden floor - \$60. The landlord submits this claim for damage to the wooden floor in the rental unit which she said was left with gouges not there at the beginning of the tenancy. The tenants are equally certain that the floor is as it was at the beginning of the tenancy and note that that had placed rugs on the floor and cushioning pads under all heavy furnishings. The stated that they had never worn their street shoes in the rental unit, a fact indirectly supported by the male tenant's complaint of having gotten a sliver in his foot from the aging and previously damaged floor.

In view of the conflicting submissions of the parties and in the absence of any corroborating evidence from the applicant landlord, I find that she had failed to meet the burden of proof required to substantiate this claim. It is dismissed.

Filing fee - \$50. As the application has not succeeded on its merits, I find that the landlord should remain responsible for her own filing fee.

As I cannot authorize the landlord to retain the remainder of the security deposit, I find that she must now return it to the tenants in an amount calculated as follows:

Security deposit	\$838.00
Remainder to be returned to tenants	\$618.00

Conclusion

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

The landlord has returned \$220 of the deposit to the tenants and must now return the remainder of \$618.00.

To that end, the tenants' copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia, for \$618.00 for service on 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: July 13, 2012.

Residential Tenancy Branch