



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting return of double the deposit paid,

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

Preliminary Matters

The landlord submitted their application on October 31, 2012. The tenants confirmed receipt of the hearing package some time ago and evidence submissions that were made in January 2013.

On January 21, 2013 the tenants applied requesting return of double the deposit, as they believe the landlord has made a "frivolous" claim against the deposit.

The tenant's application was scheduled to be heard at the same time as the landlord's hearing; which resulted in the tenant's sending their evidence via registered mail on January 21, 2013. The landlord received that evidence on January 25, 2013 and confirmed that they had been able to review the evidence.

The landlord's application included a detailed claim for damage to the rental unit, totaling \$750.00. The amounts set out in the detail dispute section of the application exceeded that indicated as the amount of monetary Order being sought; therefore, the claim, up to \$750.00 was considered.

Coloured photographs submitted by the landlord to the Residential Tenancy Branch were given to the tenants in the form of photocopies; therefore the coloured photographs were not considered. Photocopies were available for reference.

Issue(s) to be Decided

Is the landlord entitled compensation in the sum of \$750.00 for damage to the rental unit?

May the landlord retain the security deposit?

Are the tenants entitled to return of double the deposit paid?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced May 31, 2009; a deposit in the sum of \$750.00 was paid.

A move-in condition inspection report was completed and the tenants were given a copy.

The tenancy ended on October 31, 2012; a move-out condition inspection report was completed on that date and signed by the parties. A copy of this report was supplied as evidence. Some deficiencies were noted at the start of the tenancy; at the end of the tenancy no additional damage was identified. The tenants provided their written forwarding address 1 week prior to the inspection and again, on the inspection report.

Once the tenants left the home the landlord put the garage door down and discovered several dents in the door. The garage door was not inspected at either the start or end of the tenancy; however, the landlord had lived in the unit up to May 2009 and knew that the door had not been damaged. The garage door was functional and the damage was aesthetic. The landlord obtained a quote in the sum of \$810.88 to replace the complete door; a copy of the estimate was not submitted as evidence.

The landlord also discovered that the 13 year old bathroom sink had been damaged and patched by the tenant. The landlord obtained an estimate of between \$266.00 and \$478.00 for labour; plus materials in the sum of \$88.00 for repair. A copy of the estimate was not supplied as evidence.

The tenants said the landlord was present at the home prior to the inspection and could have seen the garage at that time. The tenants were not aware there as a dent in garage door.

The tenants confirmed that something had been dropped in the bathroom sink and that a porcelain repair kit was used to cover the chip that was made in the sink.

The landlord said they are worried that the chip could lead to a leak; however, there is no evidence that the sink is leaking.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

A condition inspection report is meant to provide each party with the opportunity to view the unit and to record any deficiencies that may exist. When the parties each signed the inspection report at the end of the tenancy no damage was identified and the tenants expected return of their deposit.

The landlord quickly discovered the damage to the garage door and the sink and submitted a claim against the deposit on October 31, 2012; the same day the inspection was completed. I cannot find that the claim was frivolous; the landlord's appeared to be sincere in their belief that damage had been caused by the tenants which was not seen during the inspection.

Even though the inspection report specifically references the bathroom sink and was marked as being in good condition; the landlord has now claimed replacement costs. I find that if the landlord had not seen the patch during the inspection, that patch must have been made in a way that properly masked the chip; leaving it unnoticeable. There was no evidence before me that the chip has caused the sink to leak or otherwise affect the use of the sink. Further, there was no evidence before me verifying the sum claimed by the landlord. Therefore, I find that the claim for damage to the sink is dismissed.

The parties acknowledged that the garage door was not inspected at the start of the tenancy and, while the landlords say it was free from damage at the start of the tenancy; I find that there was no evidence before me, on the balance of probabilities, that the tenants dented the door. If the door had been inspected at the start of the tenancy and then, again at the end of the tenancy, a claim for damage might have been established. Further, the landlord did not submit any verification of the cost of repair. Therefore, I find that the claim for damage to the garage door is dismissed.

As the landlord's claim is dismissed I Order the landlord to return the \$750.00 deposit to the tenants.

Based on these determinations I grant the tenants a monetary Order for \$750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

Conclusion

The landlord's claim is dismissed.

The tenants are entitled to return of the deposit.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 30, 2013

Residential Tenancy Branch

