



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence, including the landlord's photographic evidence contained on a USB flash drive.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, to authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The tenancy agreement supplied by the landlord shows that the 6 month, fixed term tenancy officially began on August 1, 2012, monthly rent was \$2700, and the tenants paid a security deposit of \$1350 at the beginning of the tenancy.

I also heard undisputed evidence that the tenants moved into the rental unit on or about August 16, 2012, and vacated the rental unit on or about January 13, 2013, having paid full rent for January 2013.

The landlord has applied for a monetary order for \$287.90, listing in her application that \$200 of the claim was for cleaning, sweeping, and drywall repairs, the filing fee of \$50, \$17.90 for a USB flash drive containing her photographic evidence, and \$20 for registered mail expenses.

The landlord attempted to increase her monetary claim during the hearing, to \$307.35; however, as the landlord failed to amend her application and serve an amended application on the tenants, I denied her request.

The landlord provided the following evidence-

The tenants removed an existing drywall television bracket and replaced it with one of their choosing, leaving damage to the drywall. The landlord said that the act of removing the bracket violated a term in the tenancy agreement.

In response to my question, the landlord agreed that she has not had the wall repaired, despite the fact new tenants are currently in the rental unit, as the new tenants are not concerned about this area.

The landlord submitted that the repair work would take 2 hours, minimum, for an average rate of \$138.

The landlord submitted that the tenants failed to adequately clean the rental unit prior to vacating as required under the Act, with the end result that the landlord had to clean the rental unit for the next tenancy.

More specifically, the landlord said that the tenants failed to sweep the garage, walkway and back courtyard, and to clean stains, scuff marks and handprints on the wall.

The landlord said that she provided the cleaning herself and based her claim upon quotes she received from several companies, suggesting that the cleaning would be \$27 per hour, minimum of three hours.

In explanation as to the final inspection, the landlord said both tenants attended the inspection on January 13, 2013, and she made notations during the inspection. The landlord acknowledged that the condition inspection report was not fully completed at the time as she would need to research costs to be able to calculate the deduction she believed she was entitled to make from the tenants' security deposit.

The landlord submitted that she emailed and mailed the condition inspection report to the tenants for their signature several days later after the completion of her research. The landlord requested a deduction of \$200.

The condition inspection report shows that the tenants signed the document, but did not agree to the deductions.

The landlord provided a significant amount of documentary evidence, which partly included the flash drive, which I have now reviewed, the move-in condition inspection report and move-out condition inspection report, photographs printed on paper, email communication between the parties, initiated by both the landlord and the tenants, quotes from cleaning companies, and quotes from handyman services regarding drywall repair.

The tenants provided the following evidence-

The tenants hired a cleaning company to clean the rental unit for the end of the tenancy, and that the rental unit was left clean. The tenants contended that they had cleaning supplies at the time of the final inspection, and if scuff marks had been pointed out by the landlord at the time, any alleged scuff marks and stains would have been cleaned.

The tenant said that he regularly cleared the leaves and swept the walkways and courtyard.

The tenants said that the landlord, at the final inspection, did walk around the rental unit making notations, but that she refused to let them see the condition inspection report until it was sent to them in email form for their signature, with a deduction. The tenants signed the report, but did not agree to the deductions.

The tenant submitted that the issue of the bracket in the drywall was dealt with during the tenancy, and that the tenant offered to pay for the work. The tenant submitted the landlord denied the offer, leading the tenants to conclude the issue was resolved.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

The section 21 of the Residential Tenancy Branch Regulations state that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the case before me, I found that I could not rely on this document as it was not completed on the day of the inspection, with undisputed evidence that the landlord made notations about the cost of deductions after the tenants left the premises.

Additionally, as to the claim for compensation for drywall repair, I find the landlord submitted insufficient evidence that she sustained a loss, as she admitted the work has not been done, and I have no proof that it will ever be completed. I therefore dismiss the landlord's claim for drywall repair for failure to meet the first and third step in her burden of proof.

As to the landlord's claim for her time in cleaning the rental unit, section 37(2) of the Act requires that, at the end of a tenancy, a tenant leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find the tenants met their obligation under the Act as I was unconvinced by the landlord's evidence that the condition of the rental unit at the end of the tenancy was anything other than as a result of normal wear and tear. I also find that a reasonable person would find the rental unit to have been left at least reasonably clean at the very least, if not exceeding that standard.

Additionally, although the landlord directed my attention to the addendum in the tenancy agreement, clauses 4 and 7, I find these clauses did not require the tenants to have all leaves removed at the end of a tenancy as the obligation was to provide regular sweeping during the tenancy and therefore irrelevant to the landlord's claim.

Due to the above, I find the landlord submitted insufficient evidence that the tenants have violated the Act or the tenancy agreement or that the landlord suffered a financial loss for cleaning and I dismiss her claim for cleaning the rental unit.

As to the landlord's claim for registered mail expenses and the USB flash drive cost, an applicant can only recover damages for the direct costs of breaches of the Act or the tenancy agreement in claims under Section 67 of the Act, but "costs" incurred with respect to filing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, this portion of the claim is denied.

As I have dismissed the landlord's monetary claim for drywall damage, cleaning, and expenses, I dismiss her application without leave to reapply.

As I have dismissed the landlord's application, I also dismiss her request to recover the filing fee.

Conclusion

The landlord's application is dismissed.

As I have dismissed the landlord's application claiming against the tenants' security deposit, I order the landlord return to the tenants the full amount of their security deposit in the amount of \$1350.

As I have ordered the landlord to return the tenants' security deposit, I also grant the tenants a monetary order pursuant to section 67 of the Act for the amount of \$1350, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recovered from 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: April 25, 2013

Residential Tenancy Branch

