



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, 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, unpaid rent and alleged 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.

Thereafter all parties gave affirmed testimony, 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 oral and documentary evidence before me that met the requirements of the Dispute Resolution 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 retain the tenants' security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on January 1, 2013, ended on August 1, 2013, monthly rent was \$1100, and the tenants paid a security deposit of \$550 at the beginning of the tenancy.

The landlord stated that there was a written tenancy agreement, but did not provide the agreement into evidence.

In her application for dispute resolution, the amount of the landlord's monetary claim was an estimated \$644.94. In the hearing the landlord stated that her monetary claim was \$628.96.

The landlord said that she would accept retention of the tenants' security deposit and the \$50 filing fee in satisfaction of her claim.

The landlord submitted that the tenants and their dog damaged the rental unit beyond the amount of the security deposit, which included a carpet cleaning, door and drywall repair, missing casing, and baseboard damage.

The landlord confirmed that the repairs had not been completed due to agoraphobia issues with the current tenants.

The landlord submitted that the tenants did not move out until August 1, 2013, and refused to attend a move-out inspection on August 1.

In response to my question, the landlord confirmed that there eventually was a move out inspection, but was conducted when the new tenants had already moved in.

The landlord's relevant documentary evidence included a copy of the carpet cleaning invoice, a bill for hydro usage, a condition inspection report, a notice for a final opportunity to inspect, and photos of the rental unit.

In response the tenants' agent stated that the tenants agreed to the carpet cleaning and that the tenants were aware that they hydro.

The agent said that she was the person attending the move out inspection on behalf of the tenants, but that she refused to participate as the landlord did not produce the move in condition inspection report so as to compare the state of the rental unit.

The agent said denied that the rental unit required cleaning as stated by the landlord or that there was damage as presented by the landlord.

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, which falls in sections 7 and 67, 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.

I approve the landlord's claim for \$202.12 for carpet cleaning as the tenants agreed to the same; this claim was not in dispute.

I also approve the landlord's claim for reimbursement for hydro, in the amount of \$62.94, as the tenant's agent confirmed that the tenants would owe for hydro usage.

As to the remaining balance of the landlord's monetary claim, I find the landlord submitted insufficient evidence that she is entitled to any further amount. In reaching this conclusion, the landlord provided no evidence, such as with a receipt of invoice, that she has suffered a loss. Additionally the landlord confirmed that no repairs have been undertaken. Due to this I find the landlord has failed to meet steps 1 and 3 of her burden of proof.

I also could not rely on the condition inspection report as provided by the landlord as the inspection was conducted after the subsequent tenants have already moved into the rental unit, in violation of section 35(1) of the Act which states that the final inspection must be performed before a new tenant begins to occupy the rental unit.

I therefore dismiss the landlord's claim for further monetary compensation.

As the landlord was partially successful with her monetary claim, I award her recovery of a portion of her filing fee, in the amount of \$25.

Due to the above, I find the landlord is entitled to a monetary award of \$290.06, comprised of carpet cleaning for \$202.12, hydro usage for \$62.94, and a partial filing fee of \$25.

Conclusion

The landlord's application has been partially granted as I have granted her a monetary award of \$290.06.

I direct the landlord to retain \$290.06 from the tenants' security deposit of \$550 in satisfaction of her monetary award and order her to return the balance to the tenants in the amount of \$259.94.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the balance of their security deposit in the amount of \$259.94, 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 are recoverable 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* and is being mailed to both the applicant and the respondents.

Dated: November 08, 2013

Residential Tenancy Branch

