



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 alleged damage to the rental unit, for authority to retain the tenants' security deposit, and for recovery of the filing fee.

The landlord's agent (hereafter "landlord"), the tenants and the tenant's advocate attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and the tenants submitted that they did not receive the landlord's photographs or painting invoice; the landlord submitted that they received the tenants' evidence late. No party requested an adjournment of the hearing and the hearing proceeded.

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

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

I heard testimony that this tenancy began on March 27, 2013, ended on September 22, 2013, according to the tenants, and monthly rent was \$600. There was no dispute that the tenants paid a security deposit of \$300 and a pet damage deposit of \$200 at the beginning of the tenancy. There was no written tenancy agreement.

The landlord's monetary claim is \$850, which was listed in his application; however the landlord failed to provide a detailed breakdown of the claim.

I asked the landlord of what items the monetary claim comprised, with the landlord submitting as follows:

Cleaning	\$100
Broken door	\$155
Broken countertop	\$156
Broken kitchen drawer	\$50
Repainting	\$207
Damaged main door frame	\$100
Dog urine stain	\$100

The landlord's relevant documentary evidence included photographs of the rental unit at the end of the tenancy, a receipt for paint and painting materials, and a receipt for photographs.

The tenants' relevant documentary evidence included a written response to the landlord's application and a copy of the tenants' notice to end the tenancy and a request for a return of their security deposit and pet damage deposit.

In support of their application and in response to some of my questions, the landlord submitted the rental unit required cleaning at the end of the tenancy, due to the condition in which it was left by the tenants. There is no receipt for the cleaning provided by the landlord.

As to the alleged damage to the door, the landlord said that the door was older, but in decent shape. The landlord claimed the handle was pulled from the door. The landlord did not know the age of the door.

As to the countertop, the landlord said that the tenants were informed that they should not yank on the drawer, even though the drawer was sticking, until the landlord could replace the kitchen drawer. Additionally, the kitchen drawer went missing, and the tenants were responsible, according to the landlord.

The landlord further claimed that it was necessary to repaint the walls and ceilings, due to the fault of the tenants.

The landlord said that the tenants' dog caused damage to the carpet.

In response to my question, the landlord confirmed there was not a move-in or move-out condition inspection report. The landlord stated that the tenants wouldn't sign the report.

In response to the landlord's application, the tenants and their advocate submitted that after the tenants moved out most of their personal property, they went to the rental unit to retrieve the remaining property and to clean and perform touch-up painting on September 27; however, when they arrived the rental unit door was wide open as the landlords had already begun to clean and paint, according to the tenants, even though rent was paid through September 2013.

The tenants submitted that due to the rude and aggressive behaviour of the landlord, they felt threatened and scared to go back in the rental unit. The tenants submitted that the RCMP were called that day by them, but were advised no action would be taken as this was a residential tenancy matter.

The tenants submitted that they accidentally broke the bathroom door, which was acknowledged to the landlord; however the tenants submitted that they were told not to fix the door by the landlord as he wanted to match all the other doors.

The tenants submitted that the only reason the countertop and drawer was damaged as the landlord, after many requests, refused to fix the sticking drawer containing the tenants' eating utensils.

The tenants denied the rental unit required repainting.

The tenants denied that their dog chewed on the main door frame; however the tenants submitted that their dog did scratch the frame and that they were to paint over the scratches, except for the feeling of being scared of the landlord.

The tenants denied that their dog stained the carpet, as it was stained when they moved in.

The tenant's advocate pointed out that the landlord failed to provide for a move-in or move-out inspection, and that there was no condition inspection report notating the condition of the rental unit, either at the beginning or the end of the tenancy.

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.

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 party took reasonable measures to mitigate their loss.

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

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me I find the landlord has failed to meet their obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit and pet damage deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

Further the landlord has submitted no verification of a loss or cost incurred, other than a receipt for paint. As I have found that there is no proof that the tenants caused damage, due to the lack of a condition inspection report, I decline to consider the costs of paint.

I therefore find the landlord has submitted insufficient evidence to prove his claim for damage by the tenants to the rental unit \$850 and I dismiss his application, without leave to reapply.

As to the issue of the tenants' security deposit of \$300 and pet damage deposit of \$200, under section 24(2) and 36(2) of the Act, when a landlord fails to conduct a condition

inspection and to properly complete a condition inspection report, the landlord's claim against the security deposit and pet damage deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to file a claim against the security deposit and pet damage deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address, according to section 38(1) of the Act.

In the case before me, the evidence shows that the tenants provided their written forwarding address in their notice to end the tenancy, dated August 28, 2013, which was the same address the landlord used to serve the tenants his application for dispute resolution on October 8, 2013.

Therefore the landlord was required to return the full amount of the tenants' security deposit and pet damage deposit to the tenants by October 15, 2013, the last day of the tenancy and failed to do so.

I therefore find the tenants are entitled to double their security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

I therefore find the tenants are entitled to a monetary award of \$1000, comprised of their security deposit of \$300, doubled to \$600, and their pet damage deposit of \$200, doubled to \$400.

I grant the tenants a final, legally binding monetary order in the amount of \$1000, 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 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 subject to recovery from the landlord.

Conclusion

The landlord's application is dismissed.

As I dismissed the landlord application for damage to the rental unit, I have granted the tenants a monetary order comprised of their security deposit and pet damage deposit, doubled.

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 respondent.

Dated: January 14, 2014

Residential Tenancy Branch

