



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, MNDC, FF
 For the tenant: MNSD, MNDC, MNR, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlords applied for authority to retain the tenants’ security deposit, a monetary order for alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenants applied for a return of their security deposit, a monetary order for money owed or compensation for damage or loss and a monetary order for the cost of emergency repairs, and for recovery of the filing fee.

The above listed parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other’s evidence.

At the outset of the hearing, each party confirmed that they had received the other party's evidence and applications. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence of the parties 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

Are the landlords entitled to monetary compensation and to recover the filing fee?

Are the tenants entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this tenancy began on August 1, 2011, monthly rent was \$1450 and the tenants paid a security deposit of \$725.

The tenants submitted that they vacated the rental unit on October 31, 2013.

The landlords submitted undisputed testimony that the security deposit has been returned to the tenants.

Landlords' application-

The landlords' monetary claim is loss of rent revenue for November 2013, in the amount of \$1450, and carpet damage for \$557.62.

The landlord's relevant documentary evidence included a condition inspection report, which I note does not contain any report of the condition of the rental unit at the move-in, the written tenancy agreement, notice from the tenants of their intent to move out of the rental unit on October 31, 2013, a carpet installation invoice, for the amount of \$285.73, a carpet invoice in the amount of \$271.89, and a black and white copy of a picture of what would appear to be a carpet, which I note is too dark to distinguish.

In support of their claim for carpet damage, the landlord submitted that when the parties were conducting a move-out inspection, the tenants refused to go upstairs, becoming agitated. The tenants, according to the landlords, were using vulgar language, threatened violence, and just wanted to go outside.

The landlords submitted that upon an inspection of the third bedroom upstairs, they discovered a large, red stain, which could not be removed with a steam cleaning, necessitating a carpet replacement.

In response to my question, the landlord did not know the specific age of the carpet, but guessed the age was 8 years, as the former owner had replaced the carpets just prior to the landlords purchasing the property.

In response, the tenant submitted there was a red stain in the carpet due to their son's costume; however, the tenant steam cleaned the carpet and the stain was very small, according to the tenants.

The tenant also questioned the amount of yardage of carpet to be replaces as contained on the quotes of the landlords, as the carpet was in the small, 3rd bedroom. The tenants also submitted that they informed the landlord they had a friend who could fix the carpet, but never heard from the landlords.

As to the issue of unpaid rent, the landlord submitted that they are entitled to loss of rent revenue as the tenants refused to return the keys to the rental unit without receiving their security deposit. The landlord further submitted that the tenants would not attend an inspection until after October 31, 2013, and therefore the landlords could not go into the rental unit.

In response to my question as to when the landlord began advertising the rental unit, the landlord replied there was no point in doing so until the tenants returned the keys and the parties had a walk through inspection.

In response, the tenant submitted they had vacated the rental unit on October 31, and moved right next door. The tenants further submitted that the landlords were not able to attend the rental unit for the inspection until November 2, and that they were willing to meet with the landlords on October 31.

Tenants' application-

The tenants' monetary claim is \$31.24 for a door knob replacement and two hours of labour at \$25 per hour, \$220 for labour for a kitchen faucet replacement, \$220 for labour for a garbage disposal system, \$298 for cleaning and replacing the furnace filter, \$330 for unclogging the driveway drain, and \$200 for trimming and removing tree branches.

The tenants' relevant documentary evidence included a carpet quotation for carpet replacement in their present home, a door knob receipt, photographs of the rental unit, and a reference letter.

In support of their application, the tenant contended that he was entitled to costs in replacing the front door knob as the landlord failed to repair the door knob.

As to the kitchen sink, the tenant submitted that the landlord did not have the faucet repaired, but brought the fixture to the rental unit for the tenant to install.

As to the garbage disposal system, the tenant submitted that the system failed and he installed the replacement for the landlords.

The tenants submitted that the landlord never provided an annual furnace service and that the landlords informed him the tenants would be responsible for the filter replacements.

As to the driveway issue, the tenant submitted that in March 2013, the driveway drain backed-up so far, water came into the house; the tenant contended that the landlord failed to respond, causing the tenant to use his own auger.

As to the tree trimming, the landlords refused to provide for routine tree trimming.

In response, the landlord submitted that the tenants never notified him of the front door knob issue.

As to the kitchen faucet, the landlord stated that the tenant telephoned him about this issue, and agreed to reimburse him for the faucet if the tenant purchased the same; however, according to the landlord, when he received the receipt, the purchase was for a door knob and not a faucet. The landlord agreed to pay for the faucet.

As to the garbage disposal system, the landlord agreed with the tenant that he would pay for one-half of the costs of installation, not the full amount, according to the landlord.

As to the furnace, the landlord disagreed that the system required servicing and that it works fine at present.

As to the alleged issue with the driveway, the landlord submitted that he was not informed of any problems until the end of the tenancy.

As to the issue with tree trimming, the landlord submitted that the trees were only mentioned in casual conversation when the tenant informed them that he had trimmed some of the tree limbs.

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, both parties 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.

Landlords' application-

As to the landlords' claim for carpet replacement, claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

As the landlord was unable to provide the age of the carpet, as they were able to only speculate that the age was 8 years, I find the landlord was unable to demonstrate that the carpet retained any useful life at the end of the tenancy. I find it just as likely as not that carpet had reached its useful life of 10 years, as stated in Residential Tenancy Branch Policy Guideline #40, and was therefore fully depreciated.

I also took into consideration that the move-in condition inspection report was not marked, as required by the landlord under section 23 of the Act, and I therefore had no evidence to determine the condition of carpet at the beginning of the tenancy.

I therefore dismiss the landlords' monetary claim for carpet replacement and damage in the amount of \$557.62, without leave to reapply.

As to the landlord's claim for loss of rent revenue for November, I find the tenancy ended on October 31, 2013, when the tenants vacated the rental unit. I do not accept the landlords' argument that the rental unit could not be advertised or was un-rentable until the keys were returned until the move-out inspection on November 2, 2013, in light of the fact the landlords knew the tenants had vacated the rental unit by October 31, 2013.

I additionally considered that the landlords provided no evidence that the rental unit was re-rented for November and that new tenants were unable to move in due to having no keys. If this had been the case, the landlords could very well change the locks and seek monetary compensation from the tenants.

I also was persuaded that the date of the inspection, November 2, 2013, was mutually agreed upon by both parties.

Due to the above, I dismiss the landlords' claim for \$1450, without leave to reapply.

As I have not found merit with the landlords' application, I decline to award them recovery of their filing fee.

Tenants' application-

As to the tenants' claim for cost to make repairs to the rental unit or provide for services in repairing damage not committed by them, I find the tenant submitted insufficient evidence that they suffered a loss as a result of the landlords' actions and further, if the parties had an agreement for the tenants' labour, that agreement does not fall under the Residential Tenancy Act, but would be an issue for the Provincial Court (Small Claims) of British Columbia.

I also considered that many of the items claimed by the tenants in repairing or replacing, appeared to be choices made the tenants, for which they were not obligated to make. If they had issued confirmable requests to the landlords, most verifiably demonstrated by written requests, and the landlords failed to take the appropriate action as required of landlords under the Act, the tenants' options would be through dispute resolution at the time of occurrence, not well after the tenancy had ended and not the week before the hearing scheduled for the landlords' application, as is the case here. To do otherwise, I find shows that the tenants failed to mitigate any alleged loss they may have suffered.

I do, however, award the tenants \$110, which is the amount the landlord agreed in the hearing he would be willing to pay the tenants.

I note that I would also have awarded the tenants the costs of the kitchen faucet, as agreed upon by the landlords; however the tenants failed to provide a receipt for that cost and therefore the cost is indeterminable.

I therefore dismiss the tenants' monetary claim, including their request to recover the filing fee, with the exception of the above mentioned \$110, for the reasons stated above.

Due to the above, I find the tenants are entitled to a total monetary award of \$110.

Conclusion

The landlords' application is dismissed.

The tenants' application for monetary compensation is granted in very small part.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$110, which I have enclosed with the tenants' Decision.

Should the landlords 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 landlords are advised that costs of such enforcement are recoverable from the landlords.

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: March 21, 2014

Residential Tenancy Branch

