



Dispute Resolution Services

Page: 1

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

The parties 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 confirmed receiving the landlord's documentary evidence. The tenants did not submit documentary evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, 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 and pet damage deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on July 1, 2013, was for a fixed term ending on June 30, 2014, that the tenancy actually ended on February 28, 2014

when the tenants vacated the rental unit, and the tenants' monthly rent was \$1800. The tenants paid a security deposit of \$900 and a pet damage deposit of \$900 at the beginning of the tenancy, on or about June 25, 2013.

The landlord's monetary claim is as follows:

Garbage hauling	\$522.90
Cleaning	500
Chimney/fireplace cleaning	\$141.75
Repairs	\$1760
Replace missing/damaged items	\$81.56
Replace missing/damaged items	\$157.82
Unpaid rent/utilities	\$2021.27
March rent	\$1800
March hydro	\$100
Dog waste clean-up	\$65
Filing fee	\$100
TOTAL	\$7250.30

The landlord's relevant evidence included, but was not limited to, photographs of the rental unit, an estimate, confirmed paid for garbage hauling, cleaning estimate, confirmed paid, a chimney cleaning estimate, an estimate for repairs/replacement, online listings for costs of replacement items, utilities bills, the written tenancy agreement, email communication between the parties, two separate condition inspection reports, and a separate listing of alleged damage for the which the tenants would be responsible.

As to the landlord's monetary claim, the tenants agreed to the costs of the fireplace/chimney cleaning for \$141.75, the unpaid rent and unpaid utilities of \$2021.27, the March rent of \$1800, and the dog waste clean-up of \$65.

Due to the tenants' agreement on those listed items, the hearing proceeded on the remaining claims of the landlord.

Garbage hauling-

The landlord submitted that the due to the tenants leaving personal property and garbage, she was required to pay to have the garbage removed.

In response, the tenant submitted that some garbage was left, but that the actual amount as claimed was not accurate. The tenant submitted that they removed $\frac{3}{4}$ of their belongings and that their cost for garbage dumping was \$40 per truckload.

Cleaning-

The landlord submitted that after the garbage was hauled away, the rental unit required cleaning. The landlord submitted that the parties all agreed on a final inspection of February 28.

The tenants submitted that the evidence of the landlord shows a cleaning estimate, not the actual costs. The tenants denied that the rental unit required that much cleaning, 20 hours, and they estimated the actual time should be no more than 4 hours.

The landlord confirmed that she did not pay \$500 to have the rental unit cleaned, as she and relatives performed the cleaning.

Repairs-

The landlord submitted that she hired a professional to make some repairs, but that all the repairs on the estimate were not done by the professional, in the amount of \$820 by the professional. That receipt was not provided into evidence.

The tenants submitted that some of the work listed, such as a broken tile, stiff faucet and pet scratches were present at the time they moved in.

Replacement of missing/damaged items-

The landlord submitted that it was necessary to replace the missing/damaged items, due to the fault of the tenants.

The tenants agreed only that they were responsible only for the curtain rod and damaged items, but not the missing items.

Hydro-

The landlord submitted that she had to pay for hydro for March, as she had to clean and make the repairs. Therefore the tenants should be responsible for the hydro for that month.

The tenant submitted due to being evicted at the first of the month, and not living in the rental unit, they should not be responsible for hydro for the month following the tenancy.

Analysis

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.

Agreed upon costs-

As the tenants agreed to these costs of the landlord, I find the landlord is entitled to a monetary award for fireplace/chimney cleaning for \$141.75, the unpaid rent and unpaid utilities of \$2021.27, the March rent of \$1800, and the dog waste clean-up of \$65.

Garbage hauling-

In reviewing the landlord's evidence, I found the landlord's photographic evidence that the tenants left a substantial amount of garbage behind to be compelling. I was further persuaded by the tenants' failure to attend the final inspection, which would have been their opportunity to dispute the move-out condition inspection report of the landlord.

I therefore find that the landlord submitted sufficient evidence to prove that she incurred the expense as claimed for garbage hauling, and I grant her a monetary award of \$522.90.

Cleaning-

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. The tenant is

therefore not responsible to leave the rental unit in the same state of cleanliness as when the tenancy began.

In this case, the landlord confirmed that she did not pay the amount claimed as listed on an estimate, but rather she and her relatives provided the cleaning. I would expect that a landlord will have to perform at least some amount of cleaning in order to ready the rental unit for the next tenant.

In reviewing the landlord's photographic evidence, I find that the rental unit did require cleaning, but I'm not convinced that the cleaning took 20 hours for which the tenants would be responsible. I was further persuaded by the estimate submitted by the landlord, which did not provide a breakdown of all items to be cleaned.

I find a reasonable amount of time for awarding the landlord for cleaning which would attributable to the tenants is 10 hours at \$20 per hour.

I therefore grant the landlord a monetary award of \$200 for cleaning.

Repairs-

In reviewing the condition inspection reports, I find that some of the items mentioned or claimed were noted on the move-in inspection as well as the move-out condition inspection report, such as nail holes, or scratches or tears in the window screen. I therefore am not prepared to grant the landlord the entire claim for repairs.

Additionally, the evidence submitted by the landlord for this claim shows that the work to be performed by the professional was not actually performed, and I therefore had no way of knowing if the balance of the work was performed.

I am further not convinced that the kitchen faucet was required to be replaced due to tenant negligence or that the tenants left an unreasonable amount of nail holes in the walls.

I also considered that many of the repairs as claimed by the landlord and as shown by the photographic evidence was listed as one expense, and therefore I was unable to assess a cost for each or determine if the repair was done.

The tenants agreed to the studio door frame repair, the replacement of the dining room curtain rod brackets, and the lazy susan shelf.

In considering the totality of the landlord's evidence, I find the landlord submitted sufficient evidence to prove a claim of \$100 for a broken tile on the fireplace, repair the studio door frame for \$100, replacing the dining room curtain rod brackets for \$40, repairing screw holes on the banister for a baby gate for \$75, and replacing the lazy susan shelf for \$120, for a total monetary award of \$435.

Replacement of missing/damaged items-

I find the landlord submitted insufficient evidence that she incurred a cost for these claimed items, as the evidence was an internet listing of replacement costs, and there was no evidence of payment.

I therefore dismiss her claim of \$81.56 and \$157.82.

Hydro-

I do not find that the tenants are responsible for hydro costs for the month following the end of the tenancy and therefore dismiss the landlord's claim of \$100.

Filing fee-

As the landlord's application had merit and was at least partially successful, I award her recovery of the filing fee paid for this application of \$100.

Due to the above, I find the landlord is entitled to a total monetary award of \$5285.92, comprised of fireplace/chimney cleaning for \$141.75, the unpaid rent and unpaid utilities of \$2021.27, the March rent of \$1800, dog waste clean-up of \$65, garbage hauling of \$522.90, cleaning for \$200, repairs for \$435 and the filing fee of \$100.

Conclusion

I have granted the landlord's application for dispute resolution in part and awarded her monetary compensation in the amount of \$5285.92.

At the landlord's request, I allow her to retain the tenants' security deposit of \$900, their pet damage deposit of \$900, in partial satisfaction of her monetary award.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3050.92, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the order may be served upon the tenants and filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement may be recovered from the tenants.

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: July 4, 2014

Residential Tenancy Branch

