



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; MNDC; FF; O

Introduction

This Hearing was convened to consider the Landlords' Application for Dispute Resolution filed April 14, 2014, seeking a Monetary Order for damages to the rental unit and compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit and pet damage deposit against their monetary award; to recover the cost of the filing fee from the Tenants; and "other" relief.

The parties gave affirmed testimony at the Hearings.

It was determined that the Landlords served each of the Tenants with their Notice of Hearing documents by registered mail sent on or about April 17, 2014.

It was also determined that the Landlords served the Tenants with their documentary evidence by registered mail sent on July 30, 2014. The Landlord MN had no explanation for the delay in providing the Landlords' documentary evidence to the Tenants and the Residential Tenancy Branch. The Tenants provided documentary evidence to the Residential Tenancy Branch and to the Landlords by registered mail sent on August 7, 2014. The Landlord MN testified that she has not yet received the Tenant's documentary evidence.

Applicants are required to provide documentary evidence to respondents and to the Residential Tenancy Branch as soon as possible, preferably at the time that they file their applications. However, the Tenants wished to proceed rather than adjourn the matter and they were invited to provide their oral testimony with respect to the contents of their documentation.

Preliminary Matters

The Landlords' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide sufficient details in their Application with respect to what other relief they are seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute

Resolution” section. No details were provided. Therefore this portion of the Landlords’ application is dismissed.

Issues to be Decided

1. Are the Landlords entitled to a monetary award for damages to the rental unit and for the cost of carpet cleaning?
2. Are the Landlords entitled to retain the security and pet damage deposits in partial satisfaction of their monetary award?

Background and Evidence

This tenancy began in April, 2013. Monthly rent was \$1,400.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$700.00 at the beginning of the tenancy. The tenancy ended on March 31, 2014.

The Landlord MN provided the following testimony:

MN testified that the carpets in the rental unit were new when the Landlords purchased the rental unit in 2005. She stated that they were professionally cleaned at the beginning of the tenancy. MN testified that the rental unit was in a “high standard of cleanliness” at the beginning of the tenancy and that the Tenants agreed to return it in the same condition at the end of the tenancy.

MN testified that the carpets were very wet when she and the Tenants did the move-out inspection. She stated that there were 18 large spots and several small stains on the carpets. MN stated that there was a large stain in one of the corners that she believed was dog urine and that there was also a tear in the carpet.

MN stated that she had a professional carpet cleaner come and redo the carpet, but the stains would not come out. The Landlords seek a monetary award for the estimated cost of replacing the carpets. MN stated that the carpets have not yet been replaced.

MN testified that the Tenants damaged a window during the tenancy, which had to be replaced. MN stated that she did not know how old the window was, but that it was probably the original window from when the rental unit was built.

MN also asked for reimbursement of the Landlords’ costs for registered mail.

The Landlords provided a cost breakdown as follows:

Replace carpets	\$3,920.00
Professional carpet cleaning	\$369.60
Window replacement	<u>\$291.20</u>
TOTAL	\$4,580.80

The Tenants gave the following reply:

The Tenants disputed the Landlords' claim in its entirety.

The Tenants stated that the carpets were not new when they moved in. They referred to the Landlords' copy of a move-in inspection report which indicated that the dining room carpet had a stain. The Tenant CS testified that she shampooed the carpets and there was no stain when she finished, but that it became visible when the carpets dried. CS stated that her dog was fully housetrained; that there was no odour of urine; and that she believed it was possibly a stain that surfaced from the underlay after the carpet was wet from cleaning. She stated that she offered to clean the carpet again, but that the Landlord MD refused her offer.

CS testified that the wear in the carpet was due to normal wear and tear because the carpets were old and the wear was in high traffic areas.

The Tenants submitted that the window was in need of replacement because it was old and the vapour barrier was broken.

Analysis

In a claim for damage or loss under the Act, the applicant has the burden of proof to establish its claim on the civil standard, the balance of probabilities. In this case, the onus is on the Landlords to prove their claim.

To prove a loss and have the Tenants pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 21 of the Residential Tenancy Regulation provides 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 the landlord or tenant has a preponderance of evidence to the contrary. I find that the Landlords' own documentary evidence indicates that the dining room carpet was stained at the beginning of the tenancy. The Landlords did not provide a copy of an estimate for the cost of replacing the carpets. Therefore I find that the Landlords did not meet parts 1, 2 or 3 of the test for damages. The Landlords' claim for the cost of replacing the carpet is dismissed.

The Landlord MN stated that the Tenants were expected to leave the rental unit "immaculate"; however, Section 37(2) of the Act provides that tenants must leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. Section 5 of the Act provides that any attempt to contract outside of the Act or Regulation is of no effect.

The Landlords did not provide a receipt for the cost of shampooing the carpets or a copy of the tenancy agreement. The Landlords submitted that the carpets were professionally cleaned at the beginning of the tenancy and that it was understood that the Tenants would be required to have the carpets professionally cleaned at the end of the tenancy. The Tenants stated that they had shampooed the carpets at the end of the tenancy; that there was no term in the tenancy agreement requiring them to be professionally cleaned. Therefore, I find that the Landlords did not meet parts 1, 2 or 3 of the test for damages. The Landlords' claim for the cost of shampooing the carpets is dismissed.

Likewise, the Landlords did not provide a copy of the receipt for the cost of replacing the window. I find that the Landlords did not provide sufficient evidence that the Tenants were responsible for breaking the window. The Residential Tenancy Policy Guidelines provide a useful life for windows of 15 years. The Tenants stated that the window was old and should have been replaced because the vapour barrier was gone. I find that the Landlords did not provide sufficient evidence to meet parts 1, 2 or 3 of the test for damages and this portion of their claim is also dismissed.

There is no provision in the Act for recovery of the cost of serving another party.

The Landlords have not been successful in their application and therefore their application to recover the cost of the filing fee from the Tenants is dismissed.

The Landlords are holding the Tenants' security deposit and pet damage deposit in the total amount of \$1,400.00. I ORDER that the Landlords return the sum of \$1,400.00 to the Tenants forthwith.

Conclusion

The Landlords' application is **dismissed without leave to reapply**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,400.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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: September 15, 2014

Residential Tenancy Branch

