



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit and damage or loss under the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The parties agreed that the detailed calculation of the claim indicated the landlord intended to apply to retain the security deposit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$825.00 to replace a screen door?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced in August 2011 and ended by signed mutual agreement on May 15, 2014. A move-in and move-inspection report was completed; however they were not in the approved form.

There was no dispute that on December 13, 2013 the tenants informed the landlord that the screen door was in need of repair. The tenants reported the door was not shutting and then slamming against the house. This was supported by email evidence.

The landlord confirmed that in December 2013 a neighbour also complained to her, as the door was slamming on the house.

There was no dispute that the tenants made multiple efforts to have the landlord come to the home in February 2014, so she could assess the door; documented in electronic messages. The landlord did not go to the home until March 2014 as she had been away. The landlord said the latch was broken on the outside and inside of the door. The landlord did not arrange repair as she had personal things to tend to and the weather made it difficult.

Finally, after the landlord failed to have the door repaired, the tenants removed it at the end of February. They had tried lubricant and that did not work. The tenants determined that the landlord was not taking any action to repair so the door was removed.

The tenants had started locking the door from the inside, when they were home but when they went out they could not lock the door, so it could swing open.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As explained during the hearing, I find that the tenants took the steps that are expected. They contacted the landlord to request repair in December 2013; however, the landlord did not attend to inspect the door; nor did she appoint an agent to look into the need for repair.

Instead the landlord waited until March 2014 before she inspected the door. The landlord then made the claim; alleging the tenants were responsible for the damage. I have rejected that claim. The landlord has a responsibility to repair, as provided by section 32 of the Act. I find that the landlord neglected her obligation to respond to the tenant's report of a need to repair within a reasonable period of time. A delay of 3 months is not reasonable and I find that delay is what caused the door to become damaged; not any negligence of the tenants.

Therefore, I find that the claim for door replacement is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. This was explained during the hearing.

Based on these determinations I grant the tenants a monetary Order in the sum of \$600.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's claim is dismissed.

The landlord is Ordered to return the security deposit to the tenants.

This decision is final and binding and 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: October 08, 2014

Residential Tenancy Branch

