



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, 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, to retain part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

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.

Issue(s) to be Decided

Is the landlord entitled to retain \$350.00 from the security deposit for damage to the stove top?

Background and Evidence

The tenancy commenced in July 2013 with the previous property owner as landlord. The tenant said that they were given the move-in condition inspection report, which they completed and returned to the landlord. The report recorded the presence of burn rings on the stove top.

In September 2013 the current landlord assumed ownership and responsibility for the tenancy.

On August 1, 2014 the parties completed a move-out condition inspection report using the same form that had been completed by the tenant's at the start of the tenancy. The original landlord did not sign the report; it was given to the purchaser of the property.

There was no dispute that the stove top had a crack. The landlord provided several estimates for replacement, showing the cost to be at least \$350.00. The tenants guessed the stove could have been at least 10 years old; the landlord did not know how old the stove was.

The tenants said they noticed dark, burned rings on the stove top when they completed the move-in inspection report. Pictures submitted of the ceramic stove top showed it to be very well worn, with a burned and stained surface. Several days after the tenants moved in they noticed the stove top was actually cracked. The stove worked throughout the tenancy and the tenants did not bother to report the damage to the landlord.

The tenants supplied copies of 2 sworn statements. The previous tenant signed an August 25, 2014 affidavit declaring she had lived in the unit from July 1 2012 to June 30, 2013 and that the stovetop had been cracked at that time. The previous tenant said she had no prior relationship with the tenants.

The wife of the previous property owner signed an August 28, 2014 affidavit, declaring she and her husband had owned the rental property at the time the tenancy commenced; that there had been a large crack in the glass top of the stove and that this damage had occurred in 2009.

The landlord said that the emphasis should be placed on the move-in condition inspection report, which did not indicate a crack to the stove top.

Both parties supplied photographs of the damaged stove top.

The landlord has now replaced the stove.

The landlord has retained \$400.00 of the deposit; and returned the balance. The landlord applied claiming against the deposit within 15 days of August 1, 2014.

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.

Section 23 of the Act requires a landlord, together with the tenant, to complete the move-in condition inspection report. That did not occur with the original landlord. The tenants were left to complete the report, which was returned to the landlord and left unsigned. I have placed little weight on this report as the landlord failed to complete the report with the tenants; as required by the legislation.

I found the tenant's testimony, that they discovered the damage but did not report it, believable. The stove worked; they saw no need to request repair. When the tenant's testimony is combined with the 2 affidavits supplied by people who have no interest in the outcome of this hearing, I find and am convinced, on the balance of probabilities, that the stove top was damaged at the start of the tenancy. There was no other explanation for the affidavits other than to accept that both the previous property owner and previous tenant wished to set the record straight and declare the stove was previously damaged. The landlord did not suggest the affidavits were false.

Therefore, I find that the stove top was damaged at the start of the tenancy and that the landlord's claim for damage to the stove is dismissed.

Therefore, as suggested by Residential Tenancy Branch policy, I Order the landlord to return the \$400.00 that has been retained from the security deposit.

The tenants requested that any monetary Order be issued on the male tenant's name only.

Based on these determinations I grant the male tenant a monetary Order in the sum of \$400.00. 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 application is dismissed.

The tenants are entitled to return of the \$400.00 balance of the security deposit.

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: February 17, 2015

Residential Tenancy Branch

