



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAVIOTA HOLDINGS LTD. dba COUNTRY SQUIRE APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF
 MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed on August 19, 2014, to obtain a Monetary Order for: damage to the unit, site or property; to keep all the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their cross application six months later on February 20, 2015, to obtain a Monetary Order for: cost of emergency repairs; for the return of their security deposit; and to recover the cost of the filing fee from the Landlord for their application.

The hearing was conducted via teleconference and was attended by three agents for the corporate Landlord and the male Tenant who stated that he was representing both Tenants. Therefore, for the remainder of this decision, terms or references to the Landlord and the Tenants importing the singular shall include the plural and vice versa.

Each party gave affirmed testimony and confirmed receipt of evidence served by each other. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?

2. Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

It was undisputed that the Tenants entered into a fixed term tenancy agreement that began on June 1, 2013, and was set to switch to a month to month tenancy after May 31, 2014. Rent of \$900.00 was due on or before the first of each month and on June 1, 2013 the Tenants paid \$450.00, as the security deposit. Both parties were represented at the move-in inspection and signed the condition inspection report form on May 31, 2013. The Tenant gave notice to end the tenancy effective May 31, 2014, and was out of the country since May 25, 2014 and during the move out inspection which was conducted on June 3, 2014. The Tenant had left his guest with access to his apartment. The Landlord received the Tenants' forwarding address on August 7, 2014.

The Landlords testified that on the fifth day of the tenancy the Tenant's wife left a pot cooking on the stove which caused a fire in their kitchen. Damage was caused to the heat sensor and the wires to the detector system, the stove, the surrounding walls, the cupboards, and black smoke residue was left on the walls, ceilings, and all other surfaces inside the rental unit kitchen and living room. The Landlord argued that the Tenants were responsible to repair the damages as per # 27 of their tenancy agreement. He also noted that the Tenants did not have tenant's insurance, as was required per #29 of their tenancy agreement.

The Landlords submitted that they paid to have the heat detector sensor and alarm system repaired and provided a used stove to the Tenants, which the Tenants agreed to pay for. The Tenants made payments to reimburse the Landlord; however, the Landlord submitted that they still owed \$100.00 towards those costs. The Landlord asserted that the Tenants had agreed to repair and clean up the remaining damages but when the Tenants moved out the Landlord found that those damages had either not been repaired or had been repaired improperly. As such the Landlord now seeks compensation of **\$1,976.00** as following:

- 1) \$161.00 for cleaning and washing all surfaces to remove the left over smoke residue
- 2) \$25.00 to dry clean the drapes
- 3) \$90.00 for carpet cleaning
- 4) \$1,000.00 for the first coat of paint to cover up the smoke damage. The Landlord noted that their receipt indicated the cost for painting the rental unit was \$2,050.00, they were claiming the reduced amount to cover the initial coat of paint. He noted that the Tenant had had the unit repainted but noted that his photographs confirm that the ceiling was not painted right to edge of each wall and displayed the smoke damage around the edges, and the walls were touched up with a different color paint which left big blotches of color on every wall. The Landlord noted that the walls had been painted just prior to the start of this tenancy.

- 5) \$600.00 to repair the kitchen cabinets. The Landlord argued that they mitigated their loss by cleaning and painting the existing cabinet boxes and replaced the cabinet doors out of used doors they had in stock.
- 6) \$100.00 which is the balance owed to the Landlord for the stove and repairs to the heat detector system.

In support of his claim, the Landlord submitted copies of: the tenancy agreement; the move in and move out condition inspection report form; the Fire Department's report; receipts for work performed; photographs taken on June 3, 2014; and a monetary order worksheet.

The Tenant disputed the items claimed by the Landlord and submitted that the costs to repair the rental unit were the Landlords responsibility. He confirmed that they did not have insurance and stated that they were forced to pay for the repairs because they had no choice but to stay in the unit for a year because of the lease they had signed.

The Tenant submitted that the cause of the fire was simply the result of his wife cooking on the stove. The Tenant argued that his wife had the stove burner turned on high and the heat from the stove radiated to the wall, which was painted with oil based paint, which caused the fire.

The Tenant testified that his monetary claim of 3,337.50, for emergency repairs included the costs he paid to paint the rental unit, repair the walls and cabinets, replace the hood fan, and dry cleaning costs. The Tenant submitted that those repairs were completed "right away" after the fire had occurred.

In support of their claim, the Tenants submitted evidence which included photographs and receipts for the repair work. The Tenant pointed to his photographs, which were taken by his guest, and argued that they show the unit as being clean and repaired.

The Landlord disputed the Tenants' claim and argued that they have 44 identical rental units in this building. He argued that if the cause of the fire had been nothing more than cooking and heating up the wall, then they would have had numerous fires in the building. The Landlord pointed to the Fire Department's report he provided in evidence and noted that it stated "Alarms initiated by pull station from a stove-top fire. Alarm technician to service system as fire crew unable to reset alarm"

The resident managers testified that at the time of the fire, the female Tenant told both of them and the fire department that she had placed her pot on the stove, turned the stove on high, and left the kitchen while she went into another room, after which the smoke alarm went off.

In closing, the Landlord stated that the walls did not catch on fire; rather, the firemen punch holes in the walls and put fire retardant foam into the walls to ensure there was nothing smoldering behind the walls. He then pointed to the Tenant' evidence noting

that the receipts are all dated between May 18, 2014 and May 25, 2014; therefore, the Tenant could not have had all the repairs completed at the time of the fire in June 2013.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy **each** component of the test below:

- 1. Proof the loss exists,
- 2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
- 3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- 4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

Landlord's Application

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I do not accept the Tenant's submission that the fire was caused due to the proximity of the stove to a wall painted with oil based paint. Rather, I favored the Landlord's evidence that the fire was caused by the Tenants' cooking with high heat and leaving

the stove unattended. I favored the Landlord's evidence as it was straight forward, credible, and supported by witness testimony and the Fire Department's report.

Based on the above, I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean, fire damaged, and improperly painted, at the end of the tenancy. Accordingly, I find the Landlord has met the burden of proof and I award their losses as claimed, in the amount of **\$1,976.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit plus interest as follows:

Damages, repairs and cleaning	\$1,976.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,026.00
LESS: Security Deposit \$450.00 + Interest 0.00	<u>-450.00</u>
Offset amount due to the Landlord	<u>\$1,576.00</u>

Tenant's Application

Section 29 of the tenancy agreement stipulates as follows:

The tenant agrees to carry sufficient insurance to cover his property against loss of damage from any cause and for third party liability...

The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this agreement and this responsibility will survive the ending of this Agreement.

As indicated above, I favored the Landlord's evidence regarding the cause of the fire that had occurred on the fifth day of this tenancy. The undisputed evidence was that the Tenant did not have tenant liability insurance, as was required as per section 29 of the tenancy agreement. Accordingly, I find the Tenants did not mitigate their loss, and have therefore not met all four criteria of the test for damage or loss as listed above, and the claim for emergency repairs is dismissed, without leave to reapply.

The disbursement of the security deposit has been ordered above for the Landlord's application. Therefore, I dismiss the Tenants' claim for the return of their security deposit.

The Tenants have not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

The Landlord has been awarded a Monetary Order for **\$1,576.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

The Tenants' application is dismissed, without leave to reapply.

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 25, 2015

Residential Tenancy Branch

