



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNSD FF

Preliminary Issues

While checking each party into the hearing the male Tenant submitted that his first and last name were in reverse order than what was listed on the Landlord's application for dispute resolution. Accordingly, I amended the style of cause on the front page of this Decision to show the proper order of the male Tenant's first and last name, pursuant to section 64(3)(c) of the *Act*.

The Tenants argued that the mailman delivered the registered mail package with the Landlord's application and evidence to their home on September 18, 2014; therefore, the Landlord did not serve his application within the required three day period. The Tenants pointed to the Residential Tenancy Branch (RTB) documents which were dated September 12, 2014, six days before they received the package, and requested that the application be dismissed.

Upon consideration of the Tenants' request I advised them that, although section 59(3) of the *Act* and RTB Fact sheets stipulate that a copy of the application must be given to the other party within 3 days of filing the application, there is no provision in the *Act* and there was no RTB policy that would provide for a dismissal of an application on the grounds that it was served a few days after the 3 day requirement. In this case the Tenants received the application and evidence almost 7 months prior to the hearing, which is ample time to prepare their response. Therefore, I did not grant the Tenants' request and I proceeded to hear the Landlord's application.

The Tenants acknowledged receiving photographs and a copy of the condition inspection report form from the Landlord as evidence. There was no evidence received on the RTB file from either the Landlord or the Tenants. The Tenants confirmed that they made no attempt to submit documentary evidence. The Landlord testified that he thought their evidence had been submitted to the RTB but did not know when their evidence would have been sent. The Landlord then requested an adjournment to allow them more time to submit their evidence.

The Residential Tenancy Branch Rules of Procedure # 6.4 provides that the arbitrator must apply the criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- a) the oral or written submissions of the parties;
- b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective];
- c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- e) the possible prejudice to each party.

I considered that the Landlord's application was filed on-line on September 11, 2014. The RTB record indicates the Landlord was sent instructions via email which included the following:

*All available evidence must be included with the Notice of Hearing package and served to the respondents within the next three days. If the applicant is disputing a Notice to End Tenancy or is asking for an order of possession based on a Notice to End Tenancy, a copy of the notice must be served with the Notice of Hearing packages. **All available evidence, including any relevant Notice to End Tenancy, must also be submitted immediately to the Residential Tenancy Branch.** Please keep your originals, and submit copies only. [My emphasis added]*

The Landlord was also issued a "Notice of a Dispute Resolution Hearing" letter with the teleconference access code and instructions for the hearing. Under the heading "GENERAL INFORMATION about your responsibility and the hearing", item # 1 is as follows:

Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.

Based on the above, I found that the Landlord's request for an adjournment arose out of their own negligence as they failed to ensure their evidence was submitted on time prior to the hearing. To allow an adjournment on those grounds would unduly prejudice the Tenants who appeared at this hearing prepared to provide their testimony in response to the claim that was brought against them. Accordingly, I dismissed the Landlord's request for adjournment and advised that we would be proceeding with the hearing as scheduled and that I would consider oral submissions from both parties.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on September 11, 2014, to obtain a Monetary Order for: damage to the unit, site, or property; to keep all or part of 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 hearing was conducted via teleconference and was attended by the Landlord and both Tenants and each person gave affirmed testimony.

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. Following is a summary the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The undisputed evidence was that the parties entered into a fixed term tenancy that began on June 1, 2012, that switched to a month to month tenancy after May 31, 2013. The3 Tenants occupied the property early on May 15, 2012. Rent of \$2,000.00 was due on or before the first of each month and on May 5, 2012 the Tenants paid \$1,000.00 as the security deposit. Each party was represented at the May 12, 2012 move in and the August 31, 2014, move out inspections and both parties signed the condition inspection report forms.

The rental unit was described as being a brand new unit built in 2012 and the Tenants were the first to occupy the unit. The Landlord testified that the Tenants left the rental unit unclean and with some damage. They now seek compensation as follows:

\$143.05	Labor costs incurred on October 1, 2014 to replace the stainless steel fridge door as it was left scratched. The Landlord submitted that they were able to get a free door for replacement.
\$523.95	Labor and materials to replace the stainless steel kitchen sink on September 11, 2014 which was left scratched
\$1,690.00	To replace the bedroom carpet that was left stained. The carpet

has not been replaced as of yet.
\$374.06 Cleaning costs incurred on September 6, 2014, calculated at
\$35.00 per hour for 10 hours

The Landlord submitted that the rental unit was re-rented effective October 1, 2014.

The Tenants disputed the items being claimed by the Landlord and argued that despite having several inspections throughout their tenancy, the issues claimed here today were never mentioned prior to the move out inspection.

The Tenants acknowledged that there was a small scratch the was left on the stainless steel fridge door which was approximately 3 cm wide and 2 cm long. They argued that it was so small it did not need to have the entire door replaced. They do not believe they should have to pay for that scratch as it was minor and caused by only a fridge magnet.

The Tenants acknowledged that they had left the kitchen sink dirty because they were still cleaning up at the time the Landlord's agent arrived to do the inspection. They had the sink filled with water while they were cleaning and simply unplugged it and did not have time to wipe it out. They asserted that the scratches shown in the pictures were nothing more than the agent scratching the layers of dirt with her fingernails, not scratches in the actual sink.

The Tenants testified that they had the bedroom carpet steam cleaned on August 30, 2014, and there were no stains in left in the carpet. They acknowledge that the carpet was darker in spots that had been covered by furniture for the two years they occupied the property, which is what they would call normal wear and tear, not staining.

The Tenants submitted that there were areas of the rental unit that they did not have time to finish cleaning. Specifically the hallway and kitchen floor, the kitchen sink, and the vent about the stove. They argued that it would not take 10 hours or \$374.06 to finish up that cleaning and based on their experience it would take no more than \$250.00. The Tenants agreed to compensate the Landlord for cleaning costs of no more than \$250.00.

In closing the Tenants provided their new mailing address, as listed on the front page of this Decision.

Analysis

After careful consideration of the foregoing, 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.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

It was undisputed that the stainless steel fridge was scratched during this tenancy. What was in dispute was the amount of area that was scratched and whether the door needed to be, or actually had been, replaced.

After consideration of the foregoing, I find that despite the fridge being cosmetically less appealing it could still be used for its intended purpose. Furthermore, there was no documentary evidence that would prove that the door was actually replaced. Therefore,

in absence of documentary evidence and in the presence of disputed verbal testimony, I find the Landlord is entitled to nominal damages in the amount of **\$1.00**.

In consideration of the disputed verbal testimony regarding the claim for damages to the kitchen sink and bedroom carpet, and in absence of any documentary evidence to prove the damages existed, I find the Landlord provided insufficient evidence to prove the test for damage or loss, as listed above. Accordingly, the claims for damages to the kitchen sink and the bedroom carpet are dismissed, without leave to reapply.

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.

With respect to the Landlord's claim for cleaning costs of \$374.06, it was undisputed that the Tenants breached section 37 of the *Act*, by leaving the rental unit in need of some cleaning at the end of the tenancy. That being said, in absence of documentary evidence to prove the extent of the cleaning required or documentary evidence to prove the actual amount paid to conduct the cleaning, I accept the Tenants' submission that the cleaning costs would amount to no more than \$250.00. Accordingly, I award the Landlord cleaning costs in the amount of **\$250.00**.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has only partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **\$25.00**, pursuant to section 72(1) of the Act.

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 Tenant's security deposit plus interest as follows:

Nominal Damages	\$ 1.00
Cleaning Costs	250.00
Filing Fee	<u>25.00</u>
SUBTOTAL	\$ 276.00
LESS: Security Deposit \$1,000.00 + Interest 0.00	<u>-1,000.00</u>
Offset amount due to the TENANTS	<u>\$ 724.00</u>

The Landlord is hereby ordered to return the \$724.00 balance of the security deposit to the Tenants forthwith.

Conclusion

The Landlord has been awarded monetary compensation of \$276.00 which has been offset against the Tenants' security deposit. The Landlord has been ordered to return the balance of \$724.00 to the Tenants forthwith.

In the event the Landlord does not comply with the above order the Tenants may serve the Landlord the enclosed Monetary Order for **\$724.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does 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

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: April 15, 2015

Residential Tenancy Branch

