



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, MNR, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenants' security deposit or pet damage deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to authority to retain the tenants' security deposit and pet damage deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted the tenancy began on January 26, 2013, monthly rent was \$1200.00, and the tenants paid a security deposit of \$600.00 and a pet damage deposit of \$200.00, both which have been retained by the landlord.

The landlord submitted further that she became aware that the tenants had vacated the rental unit when she returned from vacation, on or about January 17, 2015. The tenants disputed that date, submitting that the landlord was informed in December 2014 that they were vacating by mid-January 2015.

There was no written tenancy agreement.

The landlord's monetary claim is as follows:

TV replacement	\$179.99
DVD/VCR replacement	\$108.00
Large picture replacement	\$39.96
TV cable replacement	\$31.99
Bedskirt replacement (withdrawn)	\$19.94
2 pillows replacement (withdrawn)	\$28.94
4' mirror replacement (withdrawn)	\$26.96
Carpet replacement	\$376.32
Brass stand replacement	\$100.00
Lawn mower service (withdrawn)	\$85.00
Rent for January 2015	\$1200.00
Hasp	\$11.51

I note that the landlord also included in her claim apparently another request for a security deposit and pet damage deposit, with interest; however, after explanation, the landlord agreed that this amount should have been a deduction, instead of an addition to her total monetary claim as the tenants had already paid a security deposit and pet damage deposit.

The landlord confirmed that there was no move-in or move-out condition inspection report for the rental unit.

The landlord's relevant documentary included store receipts, photographs of the rental unit, and an estimate for a carpet replacement.

The tenants' evidence included a written submission and copies of emails between the parties.

The landlord and tenants provided the following oral evidence in support of and in response to the landlord's application.

Television, DVD/VCR players, cables-

The landlord submitted that these items were in the rental unit at the start of the tenancy, as the home was furnished, and that they were missing at the end of the tenancy. The landlord confirmed that none of the items had been replaced as of yet.

In response, the tenants submitted the television was old and that it stopped working; thereafter the tenants recycled the TV set and replaced it with another one. The tenants submitted further that they did not watch television and that the replacement was still in the rental unit, as shown by current real estate listings.

The tenants submitted that the other items were stored in the shed on the property.

Large picture-

The landlord submitted that she found the large picture, which had been hanging in the rental unit, in the shed after the tenancy ended, and that it was damaged.

In response, the tenants submitted that all the pictures left in the rental unit were taken down and stored in the shed. When the tenancy was ending, they tried to put the pictures back to their original location, but obviously missed this particular one. The tenants were not aware the picture was missing or damaged, and submitted that if it was damaged, it would have been when a beam in the shed fell.

Carpet replacement-

The landlord submitted she noticed the carpet in the ensuite bathroom was wet when walking on the carpet after the tenancy ended, which prompted a call to a plumber. According to the landlord, the plumber attributed the water leak to tissue caught in the "S" bend in the toilet. The landlord claimed that as the tenants had use and control of the toilet, they were responsible for any resulting damage, which in this case, was a wet carpet requiring a replacement.

In response, the tenants submitted that when they left the rental unit, there was no issue with the plumbing, that there was never an issue with plumbing during the tenancy, and did not know what happened to the toilet after they vacated.

Brass stand-

The landlord submitted that she purchased this antique coat stand left in the rental unit at an antique fair for \$475.00, and that the stand was missing after the tenancy ended.

In response, the tenants submitted that they do remember seeing the stand when they viewed the rental unit, but do not remember it being there when they moved into the rental unit.

Rent for January 2015-

The landlord submitted she was not aware the tenants were vacating until she returned from a holiday on January 4, 2015. The landlord submitted further that the rent cheque for January was returned due to non-sufficient funds and that her understanding was that the male tenant would continue to use the rental unit through January for skiing.

In response, the tenants submitted that they gave the landlord 3 weeks' notice they were vacating by January 15th, and understood that the landlord would keep their security deposit and pet damage deposit to pay for that part of the month.

Hasp-

The landlord submitted that the tenants damaged the hasp to the padlock, which required a replacement.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate her claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As to the landlord's claims against the tenants for damage to the carpet and hasp and as to the missing items, I find a critical component in establishing a claim for damage, and in this case missing items, and the resulting expenses is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, the landlord failed in her obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the landlord's photographs were of no probative value as the 3 photographs taken at the beginning of the tenancy were different locations and angles from the 3 photographs taken at the end of the tenancy.

I was also persuaded by the tenants' evidence that the missing items were stored in the shed on the property and that there had not been an inventory list for comparison.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants for damage to carpet and hasp and for the alleged missing items. I therefore dismiss the landlord's claim for replacement costs for the television, DVD/VCR players, cables, large picture, and brass stand and for damage to the carpet and hasp, without leave to reapply.

January 2015 rent-

Section 45 (1) of the Act requires a tenant to give written notice to end the month-to-month tenancy at least one clear calendar month before the next rent payment.

The notice is to be served in accordance with section 88 of the Act and must be in written form. Telephone calls and email transmissions are not recognized as proper methods of delivery of documents.

In the case before me, I find the tenants failed to provide the landlord with written notice that they were vacating in January 2015, and therefore, due to this and the fact the tenants were still in possession of the rental unit in January without paying rent, I find

the landlord is entitled to a monetary award for unpaid rent for January 2015, in the amount of \$1200.00.

As the landlord has had at least partial success with her application, I grant her recovery of the filing fee of \$50.00.

Due to the above, I find the landlord is entitled to a total monetary award of \$1250.00, comprised of unpaid rent for January 2015 for \$1200.00 and \$50.00 for recovery of the filing fee paid for this application.

At the landlord's request, I direct her to retain the tenants' security deposit of \$600.00 and the pet damage deposit of \$200.00 in partial satisfaction of her monetary award of \$1250.00 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$450.00, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord's application for monetary compensation is granted in part as she has been granted a monetary award of \$1250.00, and directed her to retain the tenants' security deposit and pet damage deposit in partial satisfaction.

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: August 17, 2015

Residential Tenancy Branch

