



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for damage to the rental unit, for an Order to retain the security and pet damage deposits in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security and pet damage deposit?
3. Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy and advised as follows: this fixed term tenancy began January 1, 2013 and continued on a month to month basis following the expiration of the initial term; monthly rent was payable in the amount of \$1,850.00; and, the Tenants paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$925.00 (collectively referred to as the "Deposits").

The tenancy ended on April 9, 2015 pursuant to a mutual agreement to end tenancy.

A move in condition inspection report was completed on December 28, 2012 and a move out condition inspection report was completed on April 13, 2015.

On the Landlord's Application he indicated that he sought monetary compensation in the amount of \$5,350.00 for scratches and discolouration to the rental unit floors which he alleges was caused by the Tenants and their pets.

At the hearing, the Landlord stated that although he believes the cost to repair or replace the floors may be significantly higher he simply wished to obtain authorization to retain the \$1,850.00 Deposits. The Landlord submitted photos of the rental unit, as well as the condition inspection reports in support of his claim for monetary compensation.

The Tenants opposed the Landlord's claim for compensation and allege that any damage to the floor either occurred prior to their tenancy or was caused by a leak in the building envelope which occurred in January of 2015. The Tenants submit that the floors were not refinished when they moved in, were 18 years old and were simply polished. The Tenants further submit that over time the polish wore away exposing the pre-existing scratches and damage.

Additionally, the Tenants alleged that any damage which may have been caused during the tenancy was in fact due to a leak caused by flaws in the building envelope. The Tenants stated that when they discovered the leak, they immediately informed the Landlord. The Tenants stated that the Landlord did not attend to any repairs to the building envelope which caused further water damage to the flooring. In support the Tenants also provided photos of the flooring as well as photos of the water which collected on the floor as a result of the leak.

Finally, the Tenants submit that the Landlord did not take any steps to repair, or replace the flooring as the rental unit was sold shortly after the Tenants moved out.

In reply the Landlord conceded he did not have any evidence to support his claim that the floors had been refinished as he simply relied on the information provided to him by the previous owner. The Landlord disputed the Tenants claim that the leak from the faulty building envelope caused water damage, although he agreed the repairs to the building envelope were not done until after the tenancy ended. He also confirmed that the rental unit was sold shortly after the tenancy ended and that in fact the parties reached a mutual agreement to end the tenancy because the property had sold.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage and/or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find that the Landlord has failed to prove that the Tenants, or their pets, damaged the rental unit flooring. I accept the Tenant's evidence and find it more likely that the discolouration originated from the leak caused by the faulty building envelope.

However, and more importantly, even in the event I had found the Tenants were responsible for the damage to the flooring, thereby breaching the agreement and the *Act*, I find that the Landlord has not adequately proven his loss. The parties agreed that the Landlord sold the property immediately after the end of the tenancy and did not repair the flooring. Further, the Landlord failed to submit evidence which would support a finding that the value of the property was diminished by the condition of the floors.

In civil claims monetary compensation is awarded to return the aggrieved party to the position they would have been prior to the harm occurring. It is not appropriate to put the aggrieved party in a better financial position than they would have been had the harm not occurred. In this instance, the Landlord has sold the property and does not intend on repairing the floors. Further, there is insufficient evidence to prove what loss the Landlord actually suffered due to the alleged floor damage and whether the condition of the floors affected the resale value of the property. Without proof of any loss, to award him compensation could provide him a windfall.

For these reasons, I dismiss the Landlord's claim for compensation for damage to the flooring, his request to retain the security deposit and to recover the filing fee.

The Landlord is to return the Deposits to the Tenants within 15 days of the date of receipt of this Decision.

Conclusion

The Landlord failed to prove that he suffered a loss as a result of the damaged floors. His claim is dismissed in its entirety. The Landlord is to return the Tenants' Deposits within 15 days of the date of receipt of this Decision.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, 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 21, 2015

Residential Tenancy Branch

