



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; MNDC; FF; O

Introduction

This is the Landlord's Application for Dispute Resolution a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards her monetary award; and to recover the cost of the filing fee from the Tenants.

The matter was convened on July 30, 2015, and adjourned to reconvene on October 14, 2015. An Interim Decision was issued on July 30, 2015, which should be read in conjunction with this Decision.

It should be noted that in my Interim Decision, pursuant to the provisions of Rule 3.19 of the Rules of Procedure, I ordered that no further documentary or electronic evidence would be accepted. On September 24, 2015, the Tenants provided the Residential Tenancy Branch with an additional 86 pages of documentary evidence which was not considered.

The parties and the Tenants' witness gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to compensation for damage to the rental unit, unpaid rent, and the cost of cleaning the rental unit at the end of the tenancy?
- May the Landlord apply the security deposit towards her monetary award?

Background and Evidence

The parties referred to a previous hearing which was held on November 26, 2014. With respect to that hearing, the arbitrator awarded the Landlord \$254.50 for unpaid rent and recovery of the \$50.00 filing fee. The Landlord's monetary award was set off against the security deposit, leaving **"a balance of \$370.50 in the security deposit that must be dispersed in accordance with the requirements of the Act at the end of the tenancy."**

The arbitrator also found that, pursuant to the provisions of Section 47 of the Act, the Tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of a notice to end tenancy and provided the Landlord with an Order of Possession.

This tenancy began on May 1, 2014. Monthly rent was \$1,350.00, due on the first day of each month. The Landlord required a security deposit in the amount of \$675.00, but received only \$337.00 from the Tenants. She stated that the Tenants made up the remaining security deposit by cleaning the rental unit at the beginning of the tenancy, because it was not left reasonably clean by the previous tenant.

The Landlord did not attend at the Condition Inspection at the beginning of the tenancy. The Tenants and the Landlord met for a Condition Inspection on January 1, 2015. The Landlord provided a copy of the Condition Inspection Report in evidence.

The Landlord gave the following testimony:

The Landlord stated that the Tenants damaged the kitchen counter and that it could not be repaired. The Landlord stated that the kitchen counter has not yet been replaced. She seeks a monetary award of **\$300.00** for this damage.

The Landlord testified that the Tenants also damaged the fireplace tiles, which have also not yet been replaced. The Landlord seeks a monetary award of **\$100.00** for this damage.

The Landlord stated that the Tenants did not leave the rental unit in a reasonably clean condition at the end of the tenancy. She stated that the windows, floors and ceiling were dirty and that it took 5 hours to clean the rental unit. The Landlord seeks a monetary award of **\$120.00** for this portion of her claim.

The Landlord also seeks a monetary award in the amount of **\$30.00** for "rent owed".

The Tenants and their witness RZ gave the following testimony:

The Tenants dispute the Landlord's claim in its entirety. They stated that they cleaned the rental unit at the beginning of the tenancy because it was filthy. They also testified that they repaired and painted walls that were damaged from the previous tenancy.

The Tenants stated that the kitchen counter was damaged by the previous tenant and that the fireplace tiles were stained when they moved into the rental unit.

The Tenants testified that the copy of the Condition Inspection Report provided by the Landlord was altered. They stated that the Landlord added notes to the Report which

were not there when the Tenants signed it. The Tenants stated that the rental unit was very clean when they moved out.

RZ testified that he was there for the move out Condition Inspection. He stated that he also helped the Tenants move in at the beginning of the tenancy. RZ stated that the rental unit was dirty at the beginning of the tenancy and was exceptionally clean at the end of the tenancy. RZ testified that the kitchen counter had a burn mark on it when the Tenants moved in and that there was nothing wrong with the fireplace. He stated that the fireplace was old stone which had discoloured, but that it was like that when the Tenants moved in.

Analysis

Before an arbitrator can make an order under Section 67 of the Act, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden is on the Landlord.

There was no Condition Inspection Report completed by the Landlord at the beginning of the tenancy and therefore, I find that the Landlord did not comply with the provision of Section 23 of the Act and Part 3 of the regulation. I find that the Landlord did not provide sufficient evidence to prove her claim with respect to damages. I find that she provided insufficient evidence to prove that the Tenants damaged the counter or the fireplace and that she failed to provide evidence of the cost of repairing the damages. Therefore, this portion of her claim is dismissed.

The copy of the Condition Inspection Report provided by the Landlord differs from the photographs of the Condition Inspection Report provided by the Tenants. The Tenants' witness testified that the rental unit was very clean at the end of the tenancy. I find that the Landlord did not prove this portion of her claim, on the balance of probabilities, and it is also dismissed.

The Landlord provided insufficient proof of her claim for unpaid rent in the amount of \$30.00, and this portion of her claim is also dismissed.

The Landlord has not been successful in her Application for Dispute Resolution and therefore I declined to award her the cost of the filing fee.

I ORDER that the Landlord return the remainder of the security deposit, in the amount of **\$370.50**, to the Tenants forthwith. The Tenants' copy of this Decision is accompanied by a Monetary Order, which is enforceable through Provincial Court.

Conclusion

The Landlord's Application is **dismissed in its entirety**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$370.50** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 26, 2015

Residential Tenancy Branch

