



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mnr, mnd, mnsd, opl, ff

Introduction

The landlord has applied for resolution of a dispute in the tenancy at the above noted address, and requests an Order of Possession, a Monetary Order and an order to retain the security deposit.

All parties attended the hearing, and testimony was heard from all parties, as well as from the witnesses for the landlord. There was no issue as to service of the claim or of the respective evidence packages.

The landlord sought to amend his claim at the hearing to a higher sum than claimed. No formal amendment to the claim was filed with the Residential Tenancy Office, or provided to the tenants or to me as is required under the Rules of Procedure, and the tenants did not agree to an amendment. Under these circumstances, the request to amend the claim was dismissed.

The tenancy ended prior to the landlord's claim being filed, and there is clearly no basis therefore to issue an Order of Possession. That portion of the claim is dismissed.

Issues to be decided

I am asked to determine whether the tenants are liable for the landlord's various claims for cleaning and repairs, and arrears of utilities. If so, I am asked to decide whether the landlord may retain the security deposit in partial satisfaction of such award.

Background and Evidence

This tenancy originated August 1, 2015 and ended January 31, 2016. A \$750.00 security deposit was paid. Monthly rent was \$1,500.00, payable on the first day of each month. The tenants were liable to pay utilities including BC Hydro, although the service remained in the landlord's name. The tenants vacated the premises January 31, 2016. Prior to the tenancy being entered into, negotiations had occurred regarding the purchase of the home by the tenants from the landlord, but no such agreement was made. A condition inspection had occurred in the course of the purchase negotiations, but no further condition inspection occurred with respect to the tenancy, and no condition inspection report for this tenancy was made by the landlord.

The landlord's claim deals with alleged damage and lack of cleaning to the home, following the ending of the tenancy. There is conflicting evidence as between the landlord and his witnesses, and the tenants, as to the condition of the home at the start of the tenancy. The landlord claims that at the end of the tenancy significant damage and lack of cleaning was discovered. The tenants dispute responsibility for any damage, and allege the premises were left in a condition that was more clean than when they got it.

Analysis

Tenants must maintain "ordinary health, cleanliness and sanitary standards" throughout the premises and property. Tenants are generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. Tenants are also generally required to pay for repairs where damages are caused, either deliberately or as a result of negligence, by the tenants or their guests, or their pets. Tenants are generally not liable for damage attributable to depreciation, or ordinary wear and tear.

In this case, the landlord has various claims as against the tenants. Based upon the testimony and the evidence before me, these various components of the claim have been decided as follows:

1. Firewood – Although alleging that the tenants failed to replace all firewood used, the landlord agreed at the hearing that this claim is offset by extra propane left by the tenants. No award is made.
2. Cleaning- I have no reason to disbelieve the testimony of the landlord's spouse or witness, both of whom testified to the premises being in a pristine condition in terms of cleanliness at the start of the tenancy. I also accept that the landlord's spouse spend 10 hours cleaning following the tenancy, and that the tenants are liable for this time at an hourly rate of \$20.00, for a total of \$200.00.
3. Pellet Stove and Wood stove – I deny the claim to clean out these stoves, as these were heating the house when the tenants vacated the premises.
4. Broken window handle – I accept the tenants' testimony that the window handle broke off as a result of age and wear. The tenants are not found liable for this damage.
5. Garage door opener- the landlord has failed to establish on a balance of probabilities that the tenants kept or lost one of the garage door openers. No award is made.
6. Garage cover – the garage cover was damaged during the course of the tenancy, and I find no evidence that the landlord was responsible in any for this damage. I therefore hold the tenants liable, as the cover was not returned in the condition found. The cost of the new cover is \$240.79 and labour is \$169.21. These sums total \$410.00 and are awarded to the landlord.
7. Carpet – The existing carpet was about 25 years old, and the landlord alleges it was damaged and stained by the tenants, while the tenants allege it was in poor condition from the start, and smelled of cat urine. Policy Guideline 40 sets out a guide as to the useful life of various portions of a home for use in claims such as this, and assesses the useful life of carpeting as 10 years. For the purposes of this claim, I find that the carpet had depreciated to no residual value over 25 years. The tenants are therefore not liable for any of the costs to upgrade or replace the carpeting and no award is made.
8. Linoleum – I accept the male tenant's testimony that the stain to the linoleum was attributable to a leak of the landlord's iron filter. The tenants cannot be held liable for this resulting damage.
9. Blinds – In the absence of a condition inspection report from the start of the tenancy, I accept the tenants testimony that the damage to the blind occurred as a result of wear. The tenants are not found liable for the damage to the blinds.

10. Window cleaning – I accept the testimony of the landlord's witnesses that the windows were clean when the tenancy began, but were filthy when it ended. I award the window cleaning costs of \$408.61.
11. BC Hydro – The tenants paid the BC Hydro bills during their tenancy, but these bills were based upon estimates of consumption, not actual consumption. I accept that the actual consumption resulted in a further charge of \$1,222.98 for the period of the tenancy, and the tenants are found liable for this sum.
12. Roof repair – The landlord permitted the tenants to install a satellite dish on the roof, but after the tenancy ended, the dish was removed (not by the tenants, but presumably by the company that installed it) who repaired the small holes with silicone. The landlord is unsatisfied with this repair, and seeks a better repair. I find no evidence that the landlord has actually made such repair, nor has the landlord proven that such an extensive repair is necessary. No award is made.
13. Filing fee- As the landlord is successful with a portion of his claim, the landlord is awarded recovery of the filing fee of \$100.00.

The total sum awarded is \$2,341.59.

The landlord has applied for an order to retain the security deposit. The deposit including accrued interest to the date of this hearing, totals \$750.00. As this sum is less than the award made, retention is appropriate.

Conclusion

I order pursuant to section 38(1) that the \$750.00 security deposit be retained by the landlords, in partial satisfaction of the monetary award noted above.

I further order that the remaining balance of the award due to the landlord equalling \$1,591.59 be paid immediately by the tenants to the landlord.

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: June 11, 2016

Residential Tenancy Branch