



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for damage to the rental unit, authority to retain the Tenant's security deposit and recovery of the filing fee.

The Landlord's Resident Manager, D.F. appeared at the hearing, as did the Tenant T.A. and the Tenant's granddaughter, J.L. The other Tenant, V.H., did not attend the hearing. D.F. confirmed that both Tenants were served with the Landlord's Application for Dispute Resolution as well as the Notice of Hearing by registered mail. A copy of the registered mail receipt was provided in evidence. Based on the evidence of D.F. I find that both Tenants were duly served and I proceeded in the absence of the Tenant V.H.

I explained the hearing process to the parties and offered them an opportunity to ask questions, present their evidence orally and in written and documentary form, 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 for damage to the rental unit?
2. What should happen with the Tenants' security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The resident manager, D.F., testified on behalf of the Landlord. Introduced in evidence was a copy of the residential tenancy agreement which indicated that the tenancy began on September 1, 2014. Monthly rent at the time the tenancy began was \$750.00 and the Tenants paid a security deposit in the amount of \$250.00.

D.F. testified that the tenancy ended on October 31, 2015. The Landlord provided in evidence in a copy of the move in/move out/charge analysis form. This document indicated that the Landlord sought the sum of \$250.00 for cleaning of the rental unit as well as replacement of the blinds in the amount of \$95.00. The Landlord also provided a copy of the Move in and Move-Out Condition Inspection Report.

The Landlord also provided in evidence photos of the rental unit showing the condition the rental unit was left in at the end of the tenancy. These photos showed that small amounts of dirt and debris in the refrigerator and on the floors, a bathroom which appears not to have been cleaned, burned out lights in the bathroom, spills on the kitchen cabinets, items left by the Tenant (such as a clock and scooter) and a damaged window blind.

D.F. confirmed that the Landlord's original claim was for \$300.00 but was reduced to \$250.00 as the cleaning charges were less than originally anticipated. In total, the Landlord sought the sum of \$300.00 including \$250.00 for cleaning and \$50.00 for the filing fee.

J.L. testified on behalf of the Tenant and confirmed that her grandmother T.A. opposed the amounts claimed by the Landlord. She also stated that the photos of the blinds do not show significant damage, merely "reasonable wear and tear". J.L. testified that T.A. is blind and was not able to clean the rental unit without assistance. She stated that she helped clean the rental unit, claimed that it was cleaned very well, and believes that the amount claimed by the Landlord was excessive based on the condition of the rental unit.

J.L. further stated that T.A. was opposed to any claim relating to the kitchen cupboard as she believes this was damaged due to the Landlord not attending to required repairs. J.L. stated that the Landlord was informed of the leaking under the sink and the previous manager, R., was aware of the problem with the sink yet never attended to it. J.L. stated that her grandmother tried to cover the damage with a protective covering when the Landlord did not attend to this repair.

J.L. confirmed that the Tenant was agreeable to the \$25.00 charge for leaving her scooter in the rental unit. T.A. also testified that the Tenant gave the scooter to another resident in the rental building as the Tenant was not able to use the elevator to move the scooter out of the rental unit, or to use the scooter at all because of the issues with the size of the elevator.

In response to the Landlord's claim to replace lightbulbs, the Tenant testified that the lightbulbs were unscrewed, not burned out. She stated that as she is nearly blind she did not want to pay for the electricity for the light bulbs when they were not being used.

In reply, D.F. stated that when the Tenants moved in, the rental unit was newly renovated. She said that at the end of the tenancy the blinds were crumpled up and damaged, well beyond reasonable wear and tear. D.F. also stated that she was not aware that kitchen cupboard was a previous work order, and as such she was willing to reduce the Landlord's claim by \$20.00 for this.

D.F. stated that she was unaware the lights had been unscrewed.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

Based on the above legal test, the evidence before me and the testimony of the parties I find as follows.

The photos of the rental unit show that although attempts were made to clean at the end of the tenancy, some cleaning was required to bring the rental unit to the condition required by section 37 of the *Residential Tenancy Act*. The Move-Out Condition Inspection Report also contained numerous notations indicating the rental unit was left dirty, items were left by the Tenants and the blinds were damaged.

The Landlord's agent confirmed the \$250.00 claim for cleaning should be reduced by \$20.00 for amounts relating to cleaning under the kitchen sink as she says she was not aware the previous manager had failed to address the water leak concerns raised by the Tenants. As such the Landlord sought the sum of \$230.00 for cleaning of the rental unit, disposal of the items left behind by the Tenants and replacement of the blinds.

The Tenant conceded that she was agreeable to paying the cost associated with moving the scooter and other items left in the rental unit. She disputed the amounts claimed for cleaning and replacement of the blinds.

Although I accept the Tenant and her granddaughter made their best efforts to clean the rental unit, the photos provided by the Landlord confirm that the rental unit was not left reasonably clean as required by section 37 and would have required some light cleaning. Further, the blinds were clearly damaged and required replacement.

I find that the \$230.00 sum sought by the Landlord for cleaning of the rental unit, disposal of the Tenants' belongings and replacement of the blinds is reasonable and justified based on the condition of the rental unit at the end of the tenancy. I hereby grant the Landlord the \$230.00 claimed.

As the Landlord has been successful, I also award them recovery of the \$50.00 filing fee pursuant to section 72 of the *Residential Tenancy Act* for a total monetary award in the amount of \$280.00.

The Landlord is granted authority pursuant to section 38 to retain the \$250.00 security deposit and is granted a Monetary Order for the **\$30.00** balance due. This Monetary Order must be served on the Tenant by the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord is granted the \$280.00 claimed for cleaning of the rental unit, replacement of the blinds and the cost to dispose of the items left in the rental unit as well as recovery of the \$50.00 filing fee. The Landlord is granted authority pursuant to section 38 to retain the \$250.00 security deposit and is granted a Monetary Order for the **\$30.00** balance due.

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: July 18, 2016

Residential Tenancy Branch