



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for authorization to make deductions from the tenant's security deposit for cleaning and damage. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The landlord testified that she sent the hearing package and some evidence to the tenant via registered mail in July 2017, which the tenant confirmed receiving. The landlord described the evidence sent to the tenant with the hearing package as being the condition inspection reports; a receipt for the washing machine repair; an invoice for cleaning; and a letter written to the tenant in July 2017. I noted that there was no evidence in the file before me. The landlord testified that she had delivered the landlord's evidence to a Service BC office earlier today.

The landlord explained that she had tried uploading evidence to the Residential Tenancy Branch but she could not. I noted that this file was made months before the Residential Tenancy Branch's new service portal launched, which means the method for delivering evidence to the Residential Tenancy Branch was by fax, mail or personal delivery to a Service BC office.

The Rules of Procedure provide that an applicant is to submit evidence at the time of filing the Application for Dispute Resolution, to the extent possible. If evidence is not available at the time of filing it should be submitted as soon as possible but no less than 14 days before the hearing date. Information about submitted evidence is on the Notice of Hearing itself and more information concerning deadlines for submitting evidence is

found in the Fact Sheet provided to the landlords with the hearing package and the Rules of Procedure which are available on the Residential Tenancy Branch website.

I noted that the evidence described by the landlord consisted of evidence that was largely available at the time of filing. Considering the landlord filed in July 2017 and did not submit evidence that was available in July 2017 until the day of the hearing I did not consider adjourning this proceeding. Rather, I offered the landlords the opportunity to withdraw their application with liberty to reapply or proceed with oral evidence only. The landlords stated they wished to proceed based on oral evidence only. Accordingly, the hearing proceeded.

At the end of the hearing, I provided the parties with my findings orally. The landlords indicated they would seek a review of my decision. I cautioned the landlords that failing to produce documentary and photographic evidence for the original hearing is not a basis for a review hearing.

Issue(s) to be Decided

1. Have the landlords established an entitlement to receive compensation from the tenant in the amounts claimed?
2. Are the landlords authorized to make deductions from the security deposit and if so, what amounts?

Background and Evidence

The tenancy started on November 1, 2016 and ended on June 30, 2017. The tenant paid a security deposit of \$350.00 which the landlords continue to hold. At the start of the tenancy a move-in inspection report was prepared and signed by the parties. At the end of the tenancy the parties participated in a move-out inspection together but the tenant would not sign the report as he did not agree with the deductions the landlords sought to make from the security deposit. The tenant provided a forwarding address to the landlords and the landlords filed this Application for Dispute Resolution on July 15, 2017.

The rental unit consisted of a bedroom that was for the exclusive use of the tenant and shared access to common areas such as the kitchen, bathroom and living area in the basement suite. The second bedroom was also tenanted at times during the subject tenancy.

Below, I summarize the oral testimony I heard from the parties with respect to the landlords' claims against the tenant.

Washing machine repair -- \$99.70

The landlords allege the tenant is responsible for breaking the washing machine and the cost of \$99.70 to repair it. The tenant acknowledged responsibility for this and agreed to compensate the landlords the \$99.70 they seek.

Broken hanging basket -- \$25.00

The landlords allege the tenant is responsible for breaking a hanging basket at the residential property and claim the hanging basket had a value of \$25.00. The tenant acknowledged responsibility for this damage and agreed to compensate the landlords \$25.00 they seek for this damage.

Stolen items -- \$35.00

The landlords allege the tenant took various items from the rental unit, including: hangers, a towel, cutlery, glasses and a can opener. The landlords claim they spent approximately \$35.00 to replace these items. The landlord could not recall if the receipts were given to the tenant.

The tenant denied taking the items described by the landlords. The tenant acknowledged he may have taken a few hangers accidentally since he had his own hangers and he could not recall which were his and which the landlord's hangers. The tenant stated he used his own towels. The tenant pointed out that there was a previous tenant in the other bedroom who moved out abruptly during his tenancy and another tenant came to live in the other bedroom near the end of his tenancy. The tenant stated he was not provided copies of receipts in the package the landlord sent to him in July 2017.

Cleaning -- \$148.00 + GST

The landlords testified that they had a friend of the family clean the rental unit after the tenant vacated and this person provided an invoice for the cleaning performed. The landlords described the rental unit as being "spotless" at the start of the tenancy and that they expected the rental unit to be returned in the same condition. The landlords also stated they provided the tenant with a checklist that is published on the Residential

Tenancy Branch website. The landlords described how the tenant spent only two hours cleaning on the last day of the tenancy and that he did not take all of his food and he had to return to the property for his food but that he did not take all of it. The landlords described the rental unit as needing a lot of cleaning because the tenant smoked marijuana in the rental unit which meant the walls and window coverings needed cleaning and the bedding had to be steam cleaned. Also, the microwave was greasy and there were still articles of food left in the cupboards and fridge.

The tenant questioned the veracity of the cleaning invoice and pointed out it does not establish the landlords paid this amount. The tenant stated that when another tenant moved out the landlords did the cleaning themselves. The tenant denied smoking marijuana in the rental unit. Rather, he explained he smoked away from the house as he understood he would be evicted if he smoked in the house. The tenant acknowledged that he did not clean the microwave but the tenant also pointed out that the kitchen and other common areas were used by other tenants as well.

The landlords asserted that the young tenant who moved into the rental unit in the latter half of June 2017 did not cook and always ordered in. The landlord explained that she knows this because she watches over the young tenant.

Light bulbs -- \$10.50

The landlords submitted that there was a burned out light bulb in the tenant's bedroom and two in the kitchen. The landlords were of the position that the tenant should be held responsible for the burned out light bulbs in the kitchen because the other tenant had only been there two weeks.

The tenant stated that he did not recall whether there were burned out light bulbs.

Shower curtain -- \$13.74

The landlords described the shower curtain as being new at the start of this tenancy and dirty and ripped at the end of the tenancy. The landlord stated she did not include the receipt for the replacement shower curtain the package mailed to the tenant in July 2017 but she believed she had emailed a copy to the tenant.

The tenant took the position he is not responsible for replacing the shower curtain since it was used by multiple tenants.

The landlords stated the shower curtain was not ripped when the unit was inspected when the previous tenant of the other bedroom moved out and the current tenant of the other bedroom had only been living in the unit two weeks.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove all of 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 case, the landlords have the burden of proof because they are the applicants. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the only evidence before me is oral testimony.

Upon consideration of everything before me, I provide the following findings and reasons.

Washing machine repair and damaged hanging basket

The tenant was agreeable to compensating the landlords the amounts claimed for these items. Therefore, I award the landlords \$99.70 and \$25.00 respectively and I authorize the landlords to deduct these amounts from the tenant's security deposit.

Stolen items

I find the disputed oral testimony and the lack of documentary evidence before me, such as receipts and condition inspection reports, is insufficient evidence to grant the landlords' claim. However, in recognition that the tenant acknowledged he may have

taken a few hangers, I award the landlords a nominal award of \$1.00. The landlords may deduct \$1.00 from the tenant's security deposit in satisfaction of this claim.

Cleaning

Where the landlords seek compensation for cleaning common areas, the landlords have the burden to prove the tenant alone is responsible for the necessary cleaning. Where a common area is used by more than one tenant that burden is often difficult. In this case, the landlords seek compensation for cleaning common areas and the bedroom used by the tenant exclusively. I find the disputed oral testimony and the lack of documentary or photographic evidence before me to be insufficient evidence and I deny this claim.

Light bulbs

Generally, tenants are not responsible for replacing light bulbs in a common area since the light is provided for the benefit of other people besides the tenant. Accordingly, I find the tenant is not solely responsible for replacing burned out light bulbs in the kitchen, if in fact they were burned out. As for the alleged burned out light bulb in the bedroom, I find the landlords did not provide sufficient evidence to substantiate the claim. Therefore, I dismiss the landlord's claim to replace light bulbs.

Shower curtain

The landlords provided a shower curtain in a common bathroom for the tenant and any other tenant occupying the other bedroom to use. This subject shower curtain was used by the tenant and other tenants during this tenancy. I find there is insufficient evidence to demonstrate who is responsible for ripping the shower curtain. Further, I was not provided a copy of a receipt to substantiate the replacement cost. Assuming the former shower curtain cost the same as the replacement shower curtain, approximately \$11.00, it is likely that the shower curtain was at or near the end of its useful life. Therefore, I find the landlords have failed to establish that the tenant should compensate the landlord for an inexpensive shower curtain that was several months old and used by multiple tenants.

Filing fee

The landlords had limited success in their claim and were only successful to the extent the tenant agreed to compensate the landlords. Therefore, I make no award to the landlords for recovery of the filing fee.

Monetary Order

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I order the landlords to return the balance of the tenant's security deposit after deducting \$125.70 [the sum of \$99.70 + \$25.00 + \$1.00] without delay. I provide the tenant with a Monetary Order for the balance of \$224.30 to ensure payment is made.

Conclusion

The landlords had limited success in their application due to a lack of corroborating evidence. The landlords have been authorized to deduct \$125.70 from the tenant's security deposit. The landlords are ordered to return the balance of \$224.30 to the tenant without delay. The tenant is provided a Monetary Order in the amount of \$224.30 to ensure payment is made.

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: January 18, 2018

Residential Tenancy Branch