



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNDC, MNSD, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of their monetary claim in the amount of \$5299.00. The landlord further sought recover of their filing fee.

Both parties participated in the hearing with their submissions, document and photo image evidence and testimony during the hearing. The parties acknowledged exchange of their respective evidence as further submitted to this proceeding.

Issue(s) to be Decided

Is the landlord entitled to compensation in the amount claimed for damages to the unit?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started January 01, 2017 and ended October 31, 2017 when the tenant vacated. The landlord currently holds the security deposit in trust in the amount of \$1800.00. I have benefit of a tenancy agreement document signed by both parties subsequent to the start of the tenancy.

Neither party provided document evidence in support that that at the start and end of the tenancy the parties conducted and recorded mutually attended inspections. The landlord acknowledged that no move in inspection was conducted, and that at the end of the tenancy a mutual inspection was conducted but the tenant did not sign the condition inspection report (CIR) and the landlord failed to provide the tenant with a copy once receiving their forwarding address in writing. I also do not have benefit of the

CIR. None the less the parties agreed the landlord filed for dispute resolution soon after receiving the tenant's forwarding address.

The landlord claims that the tenant caused damage to the rental unit flooring, the interior stairs, an interior rock wall, damaged walls, cellar shelves, basement doors, and a screen door amongst other items. The landlord also claims that the unit runners and mats as well as mat and toilet covers of the unit were missing and that an antique wall coat rack of personal significance was removed from the unit and not returned. As well the rental unit was left dirty and with an offensive odour. The landlord provided a series of photo images which they testified were taken before the move out inspection and before the tenant cleaned the rental unit. The landlord provided a narrative of their claims which made mention of approximations for some of the claimed damage and a cost for replacement of mats and runners. The landlord acknowledged they did not provide invoices, estimates or other evidence to support their monetary claims, however determined the tenant owes \$5299.00. The landlord was apprised that there was a lack of supporting evidence to their monetary claims.

The tenant testified that they disagreed with all of the landlord's claims of damage. The tenant provided their own written narrative in response to the landlord's evidence as well as a series of photo images, which the parties acknowledged were in complete contrast.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

Section 7 of the Act states as follows.

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Under the *Act*, the party claiming damage or a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test as prescribed by the provisions of **Section 7** of the act:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for depreciation or wear and tear), whichever is less. In cases where the damage or loss is agreed the onus is on the tenant to show that the expenditure is unreasonable or extravagant.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to mitigate or minimize through depreciation the cost of the damage incurred.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that they did not cause the damage.

The landlord bears the burden of proof. On the face of the evidence, and in the absence of receipts, invoices or estimates for the claimed damage verifying the actual or estimated amount required to compensate for the claimed damage, I find the landlord has not met their burden in this matter. Effectively, the landlord has not provided sufficient evidence to support their claim. As a result, **I dismiss** the landlord's application in its entirety, without leave to reapply.

It must be noted that **Residential Tenancy Policy Guideline #17**, in part, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for Arbitration for its return.

In this application the landlord requested the retention of the security deposit they hold in trust in partial satisfaction of their larger monetary claim. I have not been presented evidence indicating that the tenant's right to the return of their security deposit has been extinguished. Because the landlord's claim has been dismissed in its entirety without leave to reapply it is appropriate that I Order the return of the tenant's security deposit.

Conclusion

The landlord's claim **is dismissed**, without leave to reapply.

I Order the landlord to return the security deposit to the tenant. The landlord must use a service method described in Section 88 (c), (d) or (f) of the Act *[service of documents]* or give the deposit personally to the tenant.

I grant the tenant an **Order** under Section 67 of the Act for the amount of **\$1800.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 26, 2018

Residential Tenancy Branch