



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This decision pertains to the Landlords' application for dispute resolution made on May 22, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlords seek a monetary order for compensation for carpet damage caused by rabbits, to retain the security deposit, and a monetary order for recovery of the filing fee.

The Landlords and a Tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant raised an issue regarding the service of the Notice of Dispute Resolution Proceeding, noting that she was only made aware of the dispute resolution hearing in late June 2018. Residential Tenancy Branch file notes indicate that the Tenant called the Branch on June 27, 2018, to find out about the hearing.

The Landlord testified that he served the Tenant in-person on May 16, 2018, with all of his evidence, and he was of the understanding that the Branch would be mailing the Tenant the Notice of Dispute Resolution Proceeding. Though the Landlords did not fully serve the Tenants with the entire package of material, the Tenant confirmed and acknowledged that she had an opportunity to review the entirety of the Landlords' evidence over the past three weeks.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for compensation or damage?
2. Are the landlords entitled to retain the security deposit?
3. Are the Landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Landlords testified that they purchased the rental unit—a large house—in April 2017. The Tenants were living in the house when the Landlords purchased it, and the parties signed a new written tenancy agreement for a tenancy commencing April 1, 2017. The Tenants moved out on August 22, 2017.

Monthly rent, due on the first of the month, was \$1,300.00 and the Tenants paid a \$650.00 security deposit currently held in trust by the Landlords. (I note that the Landlords did not have the Tenants' forwarding address until early May 2018 and filed for dispute resolution within the 15 days pursuant to section 38 of the Act.) The Tenants did not pay a pet damage deposit. The written tenancy agreement was submitted and presented into evidence.

When the Landlords purchased the house and entered into a new tenancy with the Tenants, the Tenants had with them a guinea pig and 1 rabbit. The guinea pig was grand parented into the new tenancy agreement, but there was a "no pets" restriction in the agreement. A short time later, after the Tenants had purchased the house, the Landlords discovered that the Tenants had 8 rabbits.

When the Tenants vacated the house, the Landlords testified that the carpets were damaged beyond what any amount of professional cleaning would likely take care of, so the Landlords decided to replace the carpet with new laminate flooring.

The Landlords submitted into evidence various copies of correspondence from their real estate agent, contractor, and the Landlord's brother regarding the presence of multiple rabbits in the house. The Landlords also submitted into evidence a copy of a receipt for the laminate flooring in the amount of \$4,122.98. The Landlords claimed for labour costs in the amount of \$4,000.00, but did not submit into evidence any invoices or receipts in support of this claim. Finally, the Landlords submitted into evidence a copy of an invoice for garbage removal of the old carpet.

The Landlord testified that he did not know the age of the carpet or when it was installed. The Landlord further testified that they did not attempt to professionally clean the carpet, because they "knew the carpets had to go." The Landlords stated that they did not obtain an estimate on the cost of replacing the damaged carpet with new carpet.

A condition inspection report was submitted into evidence, along with a few photographs. The Landlord testified that they did not complete a new condition inspection report when they had the Tenants enter into a new tenancy, and simply adopted the report that was completed a year earlier. I note that the condition inspection report and the submitted photographs were of low resolution and mostly illegible.

Finally, the Landlords testified that they did not complete a condition inspection report upon the Tenants vacating the house, noting that the Tenants simply wanted to move

into their new home, and the Landlords into the house being vacated by the Tenants.

The Tenant testified that the carpets were “OK” when the Landlords entered into a new tenancy agreement and were “OK” when they moved out of the home. She further testified that there “was nothing wrong with the carpets,” and, that when the Landlords came to pick up the keys the Landlords “agreed that the house looked great.” In her final submission, the Tenant reiterated that there was no inspection at either the start of or at the end of the tenancy.

The Tenant also testified that the Landlords were fully aware that there was at least 1 rabbit in the house when the Landlords purchased the property and entered into a tenancy agreement with the Tenants, and cannot now claim that the tenancy agreement was breached by the existence of rabbits.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The Landlords seek a monetary order for compensation for damage to the carpet. The purpose of compensation is to put the person who suffered the damage or loss into the same position as if the damage or loss had never occurred. The party claiming compensation must provide evidence establishing that they are entitled to compensation.

In deciding whether compensation is due, I must determine whether:

1. a party to the tenancy agreement failed to comply with the Act, regulation, or tenancy agreement;
2. loss or damage resulted from that non-compliance;
3. the party who suffered the damage or loss can prove the amount or value of the damage or loss; and,
4. the party who suffered the damage or loss has acted reasonably in minimizing their damage or loss.

I will now address each step of the above-noted four-part test, as it applies to this case.

1. Did the Tenants fail to comply with the Act, regulation, or tenancy agreement?

The tenancy agreement restricted pets without consent of the Landlords. The Landlords submit that the Tenants breached the tenancy agreement by having the rabbits. However, the Landlords were aware that the Tenants had a rabbit when the Landlords purchased the property and entered into a new tenancy agreement with the Tenants, but did not address this or take any action in this regard. It was not until the Tenants

had 8 rabbits that the Landlords finally asked the Tenants to get rid of the rabbits, which they did.

Applying the law to the facts, and taking into consideration the testimony of the parties and the documentary evidence of the Landlords, I find that on a balance of probabilities, that the Tenants failed to comply with section 37(2) of the Act and with the tenancy agreement.

2. Did the loss or damage result from the Tenants' failure to comply with the Act and tenancy agreement?

While the Tenants failed to comply with the tenancy agreement, there is insufficient evidence linking the keeping of rabbits (numbering anywhere between one and eight) to the damage claimed by the Landlords. The Landlords argued that the rabbits caused irreparable damage to the carpets. The Tenant disputes this, arguing that there was "nothing wrong with the carpets [and that they were] in good condition."

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, I find that the Landlord has failed to provide any documentary evidence establishing that the Tenants breaching the tenancy agreement—the keeping of the rabbits—caused the damage. There was no evidence to prove that the alleged damaged to the carpets occurred during the tenancy. No move-in condition inspection report that might have established this was submitted. The photographs submitted are of little value in establishing any damage, let alone establishing the condition of the carpets at the start of the tenancy. The Landlords submitted into evidence a copy of a statement from a contractor who describes the condition of the carpets. However, I place little weight on that statement given that it does establish the condition of the carpets at the start of the tenancy.

Given the above, and taking into consideration all the oral and documentary evidence, presented before me and applying the law to the facts, I find on a balance of probabilities that the Landlords have not met the onus of proving that the damage caused to the carpets resulted from the Tenants' failure to comply with the tenancy agreement. As such, I do not need to consider parts three and four of the test.

Accordingly, I dismiss the Landlords' claim for a monetary order for compensation or damage, and for recovery of the filing fee, without leave to reapply.

I order that the Landlords return to the Tenants their security deposit in the amount of \$650.00.

Conclusion

I dismiss the Landlord's application without leave to reapply.

The Tenants are granted a monetary order in the amount of \$650.00, representing the return of the Tenants' security deposit. This order must be served on the Landlords and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: July 26, 2018

Residential Tenancy Branch