



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On July 3, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for damages, to apply the security deposit to the claim, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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

Should the Landlord receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Landlord be authorized to apply the security deposit to the claim, in accordance with Sections 38 and 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord testified that the one-year, fixed term tenancy began on July 1, 2015 and was renewed annually. The rent was \$1,900.00 and payable on the first of each month. The Landlord collected and still holds a security deposit of \$850.00 and a pet damage deposit of \$875.00. The tenancy ended on June 30, 2018.

The Tenants agreed with the Landlord other than clarifying that they moved in on June 30, 2015 and that by the time the move-in inspection occurred on July 2, 2015, the Tenants' furniture had already been moved in to the rental unit.

The Landlord testified that the move-in inspection occurred on July 1, 2015, as noted on the copy of the Condition Inspection Report. He stated that he provided a copy of the signed report and a copy of the Tenancy Agreement to the Tenants. The Tenants stated that they never received a copy of the Condition Inspection Report.

The Landlord stated that a move-out inspection occurred, in company the Tenants, on June 30, 2018 and that a written report was completed. The Landlord stated that the Tenants did not sign the move-out portion of the report and took a digital photograph of the report. The Landlord acknowledged that he continued to add notes to the report after the Tenants took the picture and provided a copy of this report to the Tenants in the hearing evidence package.

The Landlord stated that the Tenants provided their forwarding address, in writing, by leaving a note at the Landlord's residence in early July 2018.

The Landlord testified that he attempted to speak with the Tenants via phone and email about deductions to the security deposit; however, the Tenants did not respond, and the Landlord subsequently applied for Dispute Resolution. The Landlord acknowledged that he did not receive consent from the Tenants to keep the security deposit.

The Landlord testified that he laid new sod in the backyard in 2012 and that the yard was in good condition when the Tenant's moved in on July 1, 2015. He stated that the Tenants neglected the lawn and that damage occurred as a result of the Tenants failing to cut the grass regularly, leaving a trampoline in one spot for three years and due to dog urine, and feces left on the lawn.

The Landlord stated that the Tenants were responsible for the cutting and maintenance of the back yard. The Landlord submitted an estimate from a yard maintenance company to repair the lawn where the trampoline was located, repair burns from dog feces and divots from lack of maintenance, power rake, place top soil, roll and seed, for a total cost of \$1,123.50. The Landlord acknowledged that back yard was not fully fenced, and at the beginning of the tenancy, that the lawn was not as it was when new in 2012. The Landlord pointed out that the move-in inspection report stated the grounds and walk were in "good" condition and the photos he provided, showed that it was no longer in good condition at the move-out.

The Landlord is requesting compensation for the damaged lawn in the amount of half of the quoted price, for a total of \$561.75.

The Tenants testified that the Landlord provided consent to have a trampoline in the backyard. They provided a distant picture of the lawn of when they moved in and when they moved out and stated that the lawn was in better condition then when they moved into the rental property.

The Landlord stated that he has hardwood (fir) floors in the three bedrooms of the rental unit and indicated that they were refinished in 2009. The condition inspection report indicate that the floors were in good condition upon move-in. The Landlord stated that upon move-out, the two smaller bedrooms had significant gouges and the Landlord provided two pictures of scratches that he had repaired. The Landlord submitted an estimate from a hardwood flooring company with a quote of \$1,021.65.

The Tenants submitted two pictures of the hardwood floors from when they moved into the rental unit. The Tenants stated that these pictures demonstrated that the floors have had many years of wear and tear prior to the Tenants' tenancy.

The Landlord stated that the rental unit required further cleaning upon the Tenants moving out. The Landlord said that all nineteen blinds in the rental unit required cleaning and submitted pictures to show the fridge had to be cleaned, baseboards and walls needed to be wiped down and that no cleaning had been completed behind the fridge. The Landlord obtained a quote from a cleaning services company for a total of \$360.00.

The Tenants stated that they completed a thorough cleaning of the rental unit; although, after seeing the Landlord's pictures, acknowledged that the fridge was not perfect and that she might have missed a spot. The Tenant submitted pictures of the rental unit upon move-out which demonstrated that the rental unit had been cleaned.

The Landlord claimed that some drywall in the ground floor ceiling had been damaged as a result of the Tenants' sink leaking. The Landlord stated that the drain came loose at the pea trap and began to weep. The Landlord testified that he responded to it quickly and found that the Tenants had jammed in a lot of things under the vanity and, as a result, loosened the drain pipe. The Landlord stated he had to replace the seals of the pipe to fix it. He said that he paid a drywaller \$200.00 cash to fix the damaged drywall.

The Tenants stated that when the Landlord came into their rental unit to investigate the leak, he said that there was a pipe loose between the Tenants' bathroom and the Landlord's kitchen. The Tenants said that the Landlord then stated that the drain was plugged because of the Tenants' hair, then claimed that the leak was because the plunger had been removed from the sink and then blamed it on the items stored under the sink. The Tenants stated that the Landlord has been trying to blame the Tenant's for this leak and that last year, when the latest

Tenancy Agreement was being signed, the Landlord admitted that the leak wasn't the Tenants' fault.

Analysis

Firstly, I will consider whether the Landlord is authorized to apply the security deposit to a claim of damages to the rental unit. Sections 23, 24, 35 and 36 of the Act speak to the requirements for condition inspection reports and the extinguishment of rights to claim against the security deposit. Although I heard conflicting testimony regarding the specifics of the condition inspection reports, I find that the Landlord showed diligence in participating in the inspections and completing written reports. I find that the Landlord is authorized to make a claim against the security deposit in regard to damages to the rental unit and property.

Section 7(1) of the Act establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Landlord provided undisputed evidence that the Tenants were responsible for the maintenance of the back yard. The Landlord provided pictures of the damaged lawn under the trampoline and damage as a result of pet feces. The Landlord submitted a quote for the repair of the damaged lawn and is claiming half of that cost as a monetary loss based on the Tenants' failure to properly maintain the lawn as agreed between the parties. The Tenants referred to a before and after picture of the lawn; however, I find that the pictures were not detailed enough to determine the condition of the lawn. As such, I find in favour of the Landlord and find that the Landlord has established a monetary claim in the amount of \$561.75.

The Landlord has claimed damage to the hardwood floors. Early in the hearing, the Tenants provided uncontested testimony that the move-in condition inspection occurred a day later than the Landlord had claimed and after the Tenants had moved in with all of their furniture. The Tenant provided pictures of the floors upon move-in that showed the floors had been well-worn, which I find contrary to what the Landlord had stated. The Landlord did not provide any pictures of the floor prior to the Tenants moving in. When I consider all of the parties' testimony and evidence, I find that the Landlord failed to provide sufficient evidence that the Tenants were

responsible for the damage as a result of a breach of the Act or the Tenancy Agreement. As a result, I dismiss the Landlord's claim for monetary compensation for damaged floors.

The Landlord has claimed a loss for the cost of the cleaning of the rental unit after the Tenants moved out. The Landlord acknowledged that the Tenants made an effort to clean the rental unit; however, that further cleaning was necessary and provided pictures of the fridge, the area behind some appliances, baseboards and walls that required cleaning. The Landlord also stated that the 19 blinds in the rental unit were dusty and required cleaning. The Tenants stated they thoroughly cleaned the rental unit and provided pictures of a clean rental unit; however, the Tenants did acknowledge that there may have been a spot missed and that the fridge did need to be cleaned. Both parties provided conflicting testimony about the condition of the blinds. The Landlord provided a quote from a cleaning company and is claiming the cost for the cleaning at \$360.00. I find that the Landlord, on a balance of probabilities, has proven that further cleaning was required and has established a monetary claim in the amount of \$360.00.

The Landlord has claimed that the Tenants were responsible for a water leak that caused \$200.00 worth of drywall damage. The Landlord blamed the Tenants for dislodging the drain in the vanity with the items they placed under the sink. The Tenants provided testimony that conflicted with the Landlord's claim. I find that the Landlord failed to provide sufficient evidence of his loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the Tenants. Furthermore, the Landlord was unable to verify the actual monetary amount of the loss. As a result, I dismiss the Landlord's claim for damages to the drywall.

I find that the Landlord's Application was only partially successful and do not award compensation to the Landlord for the cost of the filing fee.

I find that the Landlord has established a monetary claim for a total of \$921.75. This allows the Landlord to recover compensation for damage to the back lawn and for the cleaning of the rental unit. The Landlord may apply a portion of the security deposit and pet damage deposit to this amount, in accordance with Section 72 of the Act:

Item	Amount
Damage to back lawn	\$ 561.75
Cost for cleaning the rental unit	360.00
Less security deposit and pet damage deposit	-1,725.00
Balance of security deposit and pet damage deposit for return to the Tenants	\$803.25

Conclusion

I grant the Tenants a Monetary Order for the return of the balance of their security deposit and pet damage deposit, in the amount of \$803.25, in accordance with Section 38 of the Act. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: November 22, 2018

Residential Tenancy Branch