



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks a monetary order for compensation related to damage allegedly caused to the rental unit by the tenants, and for cleaning costs, and, for a monetary order for recovery of the filing fee.

A dispute resolution hearing was initially convened on October 26, 2018 but adjourned by me to December 10, 2018 for the parties to properly serve, and review, evidence. The landlord, his wife, and one of the tenants attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties briefly raised issues with the provision of documentary evidence, though it was clear during the hearing that each party had reviewed and was familiar with the other party's evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to a monetary order for compensation related to damage allegedly caused to the rental unit by the tenants, and for cleaning costs?
2. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord's claim for compensation is based on their submissions that the tenants (or, to be specific, the tenants' cat) caused damage to a leather chair and ottoman, damage to an area rug, and miscellaneous cleaning costs.

The tenants' position is that there is no evidence linking their cat to the alleged damage and that they were unable to fully clean the rental unit due to being locked out by the landlord.

Both parties submitted extensive video and photographic evidence of the rental unit, the chair and ottoman, and other items.

The landlord testified and confirmed that the tenancy commenced May 15, 2017 and ended on or about November 10, 2017. Monthly rent was \$1,600.00 and the tenants paid a security deposit of \$800.00, which the landlord currently holds. There was not pet damage deposit. A copy of the tenancy agreement was submitted into evidence. I note that no copy of the condition inspection reports were submitted into evidence.

Regarding the leather chair and ottoman, the landlord explained that it was left behind by the previous tenants who moved to Manitoba. The rental unit was fully furnished, and the chair and ottoman became the landlord's property. The landlord and his wife explained that much of the previous tenants' belongings were put into storage, including any receipts or documents that may have contained the cost of the chair and ottoman at the time of purchase. Based on a previous conversation with the previous tenants, the chair and ottoman were valued at approximately \$900.00.

There are various other damages to the rental, including stains on a carpet and black mold and a towel rack in the bathroom that had been pulled off. As for the area rug, it was valued at \$1,200.00 at the time of purchase, and that the tenants' cat purportedly caused damage to it by pulling and clawing at it, as cats are prone to do. The landlord is not, however, seeking compensation related to stains on the carpet in the master bedroom.

The tenant testified that the area rug (she referred to it as a "mat") was "in bad condition" when she moved in, and that the previous tenants also had a cat. She pointed out that there are no photographs of the rug before she moved in. Submitted into evidence was a photograph of a mat that the tenant had purchased since her house

burned down, to show that a mat cannot deteriorate to the extent that the landlord claims in the amount of time claimed due to the actions of a cat. She also explained that the rental unit was very clean when they moved out. In her final submissions, the tenant conceded that she did not clean the freezer out as alleged by the landlord, but that she was unable to clean out a freezie pop spill on account of being locked out of the rental unit.

The tenant submitted that there is no evidence that it was her cat that caused the damage, that there are no before and after photographs of the rental unit, that there are no receipts for any of the amounts claimed, and no additional evidence proving that the tenants were responsible for the damage claimed.

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.

Section 7 of the Act states that 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.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test. The applicant must prove all four elements in order to be successful in a claim for compensation:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?
3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

Subsection 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The tenancy agreement mirrors this legal requirement by stating that the “Tenant will be responsible to repair or replace any damaged furniture.”

In this case, the landlord claims that the tenants damaged the leather chair, the leather ottoman, and the area rug. They allege that it was the tenants’ cat that caused the damage. The tenant disputes the landlord’s position and argues that the previous tenants’ cat caused the damage. While the landlord was diligent in reviewing the video evidence submitted by the tenants, and pointed out several examples of damage caused by a cat, evidence of damage does not in and of itself establish causation. I note that the landlord did not dispute, or raise as an issue, the tenant’s submission that the previous tenants had a cat.

In the absence of a condition inspection report, and in the absence of any photographs or video showing the state of the rental unit and furniture therein prior to the tenants moving in, I cannot find either a direct, or an inferred, causal link between the tenants’ cat and the purported damage. Cats are semi-wild animals that enjoy clawing furniture and rugs, amongst other items in a house, and it is equally likely that, as argued by the tenant, that the previous tenant’s cat caused the damage alleged. This can also be said for the overall condition of the rental unit at the start of, and at the end of, the tenancy, and the other items mentioned (i.e., the stains in the bedroom carpet, the black mold, and the towel rack) cannot be said to have been a result of the tenants’ actions or inactions without evidence of such.

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 evidence that the tenants caused the damage as alleged.

As the landlord has failed to establish the first criteria in the above-noted four-part test for obtaining compensation, I need not consider the remaining three criteria. As an aside, I note that even if I had found that the tenants’ cat caused the damage, the landlord provided no documentary evidence (for example, a receipt) that would have established the cost of the leather chair and ottoman and area rug.

Therefore, given the above, and taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord had not met the onus of proving his claim for compensation as sought in his application. I therefore dismiss his application without leave to reapply.

As the landlord was not successful in his application I do not grant a monetary order for recovery of the filing fee.

Conclusion

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

I order that the landlord return the tenants' security deposit in the amount of \$800.00. A monetary order for the tenants is issued in conjunction with my decision.

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: December 10, 2018

Residential Tenancy Branch