



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing was convened in response to an application by the landlord filed October 25, 2018 for a monetary order for damage to the rental unit and to recover the filing fee. The landlord was still holding the security and pet damage deposits of the tenancy at time of application.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. Prior to concluding the hearing both parties acknowledged presenting all of the relevant evidence that they wished to present.

Service provisions

The tenant acknowledged receiving the application and evidence of the landlord. The tenant testified they sent the landlord their evidence as submitted to the Branch by registered mail early in the first week of February 2019. The landlord testified they received a carded notice for registered mail on February 7, 2019. They went to the post office outlet and it was unexpectedly closed that day. They since did not return to the post office or attempt to pick up any registered mail. The tenant submitted evidence to this proceeding but failed to provide evidence of mail registration service. On balance of probabilities I find that the landlord was served the tenant's evidence in accordance with the Act, in the least, 7 days before the hearing as per the Rules of Procedure. The landlord was apprised of the tenant's evidence during the hearing as was necessary and had opportunity to respond.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damage to the rental unit?

Background and Evidence

The undisputed relevant evidence in this matter is that the tenancy started January 01, 2018 and ended September 30, 2018 by written mutual agreement. The payable monthly rent was \$1575.00. At the outset of the tenancy the landlord collected a security and pet damage deposit in respective amounts of \$787.50 for a sum of \$1575.00. At the start and end of the tenancy the landlord did not arrange for nor conducted *move in* and *move out* condition inspections. The parties agreed that at the time of filing this application the landlord had not received a written forwarding address from the tenant in accordance with the Act and therefore the tenancy deposits remained held in trust.

The landlord is claiming that the tenant caused damage to the rental unit flooring, leaving the carpeting with pet urine staining and that a portion of the manufactured laminate flooring had some anomalies (lifting ends) purported as water damage. The landlord also claims the tenant left the rental unit unclean and with carpeting requiring cleaning. In addition the landlord claims the tenant owes a water utility bill for the period the tenant occupied the rental unit.

Despite the tenant's initial determination the landlord was owed nothing, the tenant did agree the landlord is owed the cost of cleaning the rental unit in the amount of \$257.25 as well as for the water utility bill claim of \$192.78, in the sum of \$450.03.

The landlord testified they assumed ownership of the rental unit from their son *after* the tenancy was started, but from their recollections from when their son occupied the rental unit the laminate flooring was not damaged in any way before the tenancy. The tenant testified they recall the laminate flooring had beginnings of damage from the outset of the tenancy and proposed that the nature of manufactured flooring is that accelerated damage becomes more apparent once it has started. They denied allowing water to pool on the flooring as claimed by the landlord. The tenant effectively stated the laminate flooring was damaged when they moved in or on its way to augmented damage before they moved in.

The landlord testified that they had the carpeting cleaned and were advised that it was not possible to completely remove the pet odour in the carpeting. The landlord determined to replace the carpeting, claiming the tenant's pet caused pet urine staining. The landlord provided photo images of some staining of the carpet pile base upon its removal for replacement.

The tenant testified their dog never urinated on the carpet during the 9 month tenancy and that the landlord's son, as the previous occupant of the unit, also had a dog which

may have caused the pet urine staining. The landlord acknowledged their son as the previous occupant owned a dog.

Analysis

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

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

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 reasonable wear and tear for which the tenant is not responsible), whichever is less. The onus is on the tenant to show that a claimed expense is unreasonable.

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 or loss, 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 claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination that the tenant caused the purported damage. The tenant relies on their argument that the landlord cannot establish that they caused the damage nor were responsible for it, and that the claimed damage was there at the outset of the tenancy.

On preponderance of the evidence, and moreover in the absence of required condition inspection reports portraying the condition of the rental unit at the start and end of the tenancy, I find the landlord has not met the test for damages and loss. The landlord has not provided sufficient nor reliable evidence to support their claim that the tenant in this matter caused damage to the rental unit. As a result, I grant the landlord the agreed amount for cleaning and water utility bill in the sum of \$450.03, and **I dismiss** the balance of the landlord's claim, without leave to reapply. As the landlord was partly successful in their application they are entitled to recover their filing fee, for a net award of **\$550.03**.

As a result of all the above it is appropriate that I return the remaining amount of the tenancy deposits held in trust by the landlord, to the tenant as follows.

I Order that the landlord may retain \$550.03 of the greater deposits of the tenancy in full satisfaction of their award and return the balance of \$1024.97 to the tenant, forthwith.

I grant the tenant a Monetary Order under Section 67 of the Act for the balance of their deposits in the amount of **\$1024.97**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in part is granted and the balance dismissed, without leave to reapply.

This Decision is final and binding.

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: February 20, 2019

Residential Tenancy Branch