



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution filed on May 8, 2019 wherein the Tenants sought monetary compensation from the Landlords in the amount of \$1,500.00 and recovery of the filing fee.

The hearing was scheduled for teleconference at 1:30 p.m. on August 16, 2019. The Landlord, his spouse, and the Tenant, S.S.D., called into the hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Should the Tenants recover the filing fee?

Background and Evidence

The Tenant testified that the tenancy began in August of 2018. He stated that he and the other Tenants named on the Application rent a single room (which they share) and pay monthly rent of \$1,200.00.

The Tenants' claim relates to the replacement cost of items the Tenants say were removed and disposed of by the Landlords' cleaners. To this end, the Tenant testified that the Landlord's cleaner comes to the rental property at the Landlord's request, and without notice to the Tenants. The Tenant stated that the Landlord's cleaners entered the rental unit in April of 2019 and removed and disposed of some of the Tenants' utensils and kitchenware.

In terms of the \$1,500.00 claimed, the Tenant stated that a lot of the kitchen items were handmade, expensive and purchased from another country. He stated that this happened twice; on the first occasion the Tenants retrieved the items from the garbage (photos of this were provided in evidence). The Tenant stated that when it happened again, the Tenants filed for dispute resolution, following which the Landlords returned the items, but as they had been in the garbage they were infested with rats and no longer usable.

In response the Tenants' claims the Landlord testified as follows. The Landlord stated that the rental unit has eight bedrooms and eight occupants. The Landlord also stated that they have cleaners attend the rental unit due to the number of people who live there as well as the fact the Tenants were inviting a lot of people over, having parties, and not cleaning.

The Landlord claimed that it was the Tenants who put their items in the garbage bags and in the garage, not his cleaners. He further stated that because the items were not clean, rodents ripped the bags.

The Landlord disputed that the items had any value, noting that the Tenants did not provide photos of the individual items or any amounts for their replacement cost.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenants have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

After consideration of the testimony and evidence before me, and on a balance of probabilities I find that the Tenants have submitted insufficient evidence to support their claim.

The Tenants claim the Landlords' cleaner removed and disposed of various kitchen items in the garage, following which they were infested by rats and unusable. The Landlord testified that it was the Tenants who moved those items into the garage and because they were not cleaned, they attracted rodents. While it is often the case that the parties' testimony conflicts, without corroborating evidence I am unable to prefer one parties' version of events over the other. As it is the Tenants who bear the burden of proving their claim on a balance of probabilities, the result is that I find the Tenants have failed to prove the Landlords cleaner disposed of, or rendered their kitchen items useless.

Further, as noted above, the parties claiming monetary compensation must also prove the actual amount required to compensate them. As such, even in the event I had found the Landlord responsible for the Tenants' loss, I find the Tenants have failed to submit sufficient evidence to support their \$1,500.00 claim. Such evidence could have included receipts for purchase, or values of comparable items and notably no such evidence was submitted by the Tenants such that there is no basis for their \$1,500.00 claim.

For these reasons, I dismiss the Tenants' claim for monetary compensation from the Landlord. As the Tenants have been unsuccessful, I also dismiss their claim for recovery of the \$100.00 filing fee.

Conclusion

The Tenants' claim for monetary compensation from the Landlord as well as recovery of the filing fee is dismissed.

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: August 21, 2019

Residential Tenancy Branch