



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, alleged damage to the rental unit and loss of rent revenue, and for recovery of the filing fee paid for this application.

The landlord and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and each party confirmed receiving the other's evidence in advance of the hearing.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recovery of their filing fee paid for this application?

Background and Evidence

The undisputed evidence is that this tenancy began on January 15, 2018, ended on April 29, 2019, when the tenants vacated the rental unit, monthly rent was \$1,725.00, and the tenants paid a security deposit of \$862.50.

The landlord confirmed that she has retained the tenants' security deposit, having made a monetary claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of one-half month's rent	\$862.50
2. Damage repairs	\$11.29
3. Damage repairs	\$8.02
4. Damage repairs	\$98.79
5. Damage repairs	\$20.72
6. Property management fee	\$925.00
TOTAL	\$1,926.32

Loss of rent revenue-

The landlord submitted the tenants signed another tenancy agreement for a fixed term ending on June 1, 2019; however, she received notice on March 19, 2019, that the tenants were vacating by April 30, 2019.

The landlord submitted she is entitled to a loss of rent for May 1-15, 2019, due to the tenants' breach of the fixed term, as she was unable to secure new tenants until May 15, 2019. The landlord submitted that the tenants were not cooperative in allowing showings for potential tenants, being allowed only 10 days to show the rental unit.

Additionally, the landlord submitted that the tenants attempted to get permission to assign the rental unit, but that it would not work for her for the one month remaining on the tenancy agreement.

The landlord submitted that she ended up hiring a property management company to take over re-renting efforts. Additionally, the landlord submitted that she did not want to allow a new tenant into the rental unit at the beginning of May 2019, as she needed to make repairs.

In response to my inquiry, the landlord confirmed that the new tenants are paying monthly rent of \$1,850.00, the advertised price.

Tenant's response-

Tenant AN said there were at least nine different viewings, and they were not trying to restrict the landlord; however, the tenant did confirm that the tenants would have preferred one of them to be in attendance with strangers going through their home.

The tenant submitted that they wanted to go on a month to month tenancy in January 2019, but the landlord would not allow it. The tenant submitted that they were tired of constant problems with the landlord, who lived below the rental unit, and finally found a more suitable place to live.

The tenant submitted that the landlord refused their offer of having someone accept an assignment of the lease, and then hired the property management company.

Damage to the rental unit-

The landlord submitted that there was water damage to the baseboard in the bathroom, behind the toilet and coming from the shower.

The landlord submitted that she was able to buy the materials and caulk and replace the baseboard herself.

The landlord also submitted that there was some red paint on the ceiling.

The landlord submitted a copy of the move-in and move-out condition inspection report "CIR"); however, I note that the tenants did not sign this document on the move-out inspection.

The landlord submitted copied, black and white photos of the claimed damage.

Tenant's response-

The tenant submitted that there were eight people present for the move-out inspection, including the three tenants, the landlord and a representative from the property management company, and that there was no mention made of red paint. The tenant claimed this was an addition after the inspection, as can be seen by the scribbling over the original mark made at the inspection.

The tenant submitted that the rental unit was thoroughly cleaned for three days, walls were washed, floors washed and rugs were steam cleaned. The CIR showed the rental unit was in good condition.

The tenant denied that there was any water damage caused by the tenants. The tenant submitted that this house, although built in 2017, was cheaply built. The baseboard throughout

the house was a 4 inch, compressed sawdust material, and not suitable for a bathroom, according to the tenant.

The tenant submitted that they did nothing to cause the water damage, as they used a shower curtain, pointing out that there was no shower door instead. The tenant submitted that there was never caulking originally in that area of the baseboard.

The tenant questioned why the landlord claimed so much for baseboard replacement which was 3 feet long, which retails for .70 cents per foot, stating that new piece could be properly installed by a professional friend for under \$10.00.

Property management fee-

The landlord claimed this fee as she hired a company to look after re-renting the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

In a claim for damage or loss under the Residential Tenancy Act, Residential Tenancy Branch Regulations or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements, as provided for in sections 7 and 67 of the Act:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to minimize their loss.

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

Loss of rent revenue, May 1-15, 2019-

I find the landlord submitted insufficient evidence to support this claim. The landlord had over one month to find a new tenant, and by her own evidence, she could have had a new tenant beginning May 1, 2019; however, she did not allow this tenancy to start until May 15, 2019, as she wanted to make a small repair. I do not find it reasonable to prevent a new tenant from moving in in order to make a small repair, which by appearances, did not seem like a lengthy process.

I make no finding on whether or not the landlord failed to take reasonable measures to minimize her loss by asking for a substantial increase in monthly rent for the new tenant, as I have determined that it was by the landlord's own actions that a new tenancy did not start on May 1, 2019.

I therefore dismiss the landlord's claim for loss of rent revenue for May 1-15, 2019.

Damage to the rental unit-

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

I find the landlord has submitted insufficient evidence to hold the tenants responsible for water damage to the baseboard. I find that not every instance of damage during the tenancy is caused by a tenant's neglect or actions.

In this case, I find just as likely as not that the water damage for a tenancy lasting well over a year was reasonable wear and tear, considering the location of the baseboard in a room known for moisture. I also find the landlord has not submitted sufficient evidence that the baseboard originally was caulked in that area.

I was also not provided photos of the same location referenced by the landlord from that start of the tenancy. I therefor had no comparisons from the beginning of the tenancy to the end of the tenancy.

Overall, I find the water damage was as a result of reasonable wear and tear and I therefore dismiss the landlord's claim for damage repair costs.

Property Management fees-

The Act does not allow me to grant fees for the landlord's choices on how they conduct their business. I therefore dismiss their claim for \$925.00.

Due to the above findings, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants and therefore dismiss her application, without leave to reapply.

As I have dismissed the landlord's monetary claim against the tenants, I order the landlord to return the tenants' security deposit of \$862.50 immediately.

To give effect to this order, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$862.50.

Should the landlord fail to pay the tenants this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the tenants' security deposit, immediately, and the tenants are granted a monetary order in the amount of those deposits in the amount of \$862.50 in the event the landlord does not comply with this order.

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