



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

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

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The landlord submitted a monetary order worksheet 15 days prior to the hearing, on which she increased her monetary claim to \$7,016.80, with \$3,150.00 being for loss of rent revenue, \$425.97 for management fees and courier costs, and the balance for general damages.

It was explained to the landlord that she may not increase her monetary claim through her evidence, but only through an amended application. The landlord was given the opportunity to withdraw her application and file a new application for dispute resolution with an increased monetary claim. The landlord chose to proceed on her original application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to permanently keep the tenants' security deposit, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on July 20, 2014, with a beginning monthly rent of \$3,000.00, and security deposit and pet damage deposit of \$1,500.00, each, being paid by the tenants. The landlord provided a written tenancy agreement.

The evidence shows that the tenancy ended on June 30, 2019, and the monthly rent at the end of the tenancy was \$3,150.00.

The landlord confirmed that she has retained the tenants' security deposit and pet damage deposit and that she received the tenants' written forwarding address on the condition inspection report ("CIR"), on July 2, 2019.

The landlord's monetary claim listed on her application is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. General damage	\$3,101.60
2. Loss of rent revenue	\$3,500.00
3. Filing fee	\$100.00
TOTAL	\$6,701.60

At the hearing, the landlord clarified her monetary claim for general damage, based on my refusal of her attempt to increase her monetary claim through evidence, as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Weed control	\$403.20
2. Lawn repair, soil, seed	\$1,470.00
3. Garage cleaning	\$300.00
4. Carpet steam cleaning	\$344.40
5. Interior cleaning	\$375.00
6. Fireplace cleaning	\$250.00
TOTAL	\$3,142.60

General damages-

In support of her claim for yard damage/issues, the landlord submitted that she was shocked when she saw the state of the yard at the end of the tenancy, compared with how it looked at the beginning of the tenancy in 2014. The landlord said the rental home looked like an abandoned house as the yard had been destroyed.

The landlord submitted that as of the day of the hearing, the yard has not come back, as extensive work remains. The landlord said she has had landscapers tell her the holes in the yard are not normal and much work needs to be done. The landlord claimed that the holes in the yard were dug by the tenants' dogs.

The landlord claimed that the tenants destroyed the lawnmower she left for their use, pointing to a submitted photo showing extreme rust. The landlord submitted that she had to throw away the lawnmower.

The landlord submitted that the tenants failed to clean the garage, as it also required cleaning after the tenancy ended as it was filthy.

As to the interior of the home at the end of the tenancy, the landlord submitted that the carpets were not steam cleaned, the exhaust fans were dirty, there were cobwebs throughout the rental unit, the tracks to the sliding door were not cleaned, and in general, the tenants did not take responsibility in cleaning the rental unit prior to vacating.

The landlord submitted that she allowed the tenants to return to the rental unit to address all the cleaning issues, however, the tenants failed to do so.

In response to my inquiry, the landlord said she did not know the age of the carpet, but it has not been replaced in the 10 years she has owned it.

Loss of Rent Revenue-

The landlord submitted that she has been unable to re-rent the home due to the state of the yard, which is why she has not attempted to re-rent the rental unit.

The landlord's additional relevant evidence included photos in and around the rental unit home, condition inspection report (CIR), a lawn cutting invoice for \$82.95, a lawn care proposal, an estimate for seeding the lawn, dated October 7, 2019, a cheque for a landscaping company in the amount of \$3,533.00, an invoice for garbage and lawnmower removal, and a housecleaning invoice for \$400.00.

Tenants' response-

The tenants denied being requested by the landlord to return to the rental unit for more cleaning.

The tenant said that the yard looked nearly identical at the beginning of the tenancy and at the end of the tenancy, referring to the two photographs submitted into evidence.

The tenant said that the property was in better shape at the end of the tenancy than at the beginning, as he maintained the yard all during the tenancy. The tenant submitted that the lawnmower left by the landlord was too old and rusty to use as it blew up dirt and stones, and that he put it away immediately and bought one for his use. The tenant said he bought his own equipment for the yard.

The tenant submitted that the weeds in the yard were out of control when they moved in and they remained a problem throughout the tenancy. The tenant referred to the photograph supplied by the landlord showing dandelions on the left side of the yard.

The tenant submitted that the holes in the yard were 3" in diameter and that their neighbour used a tool to pull up the weeds. The tenant submitted a copy of a letter and a photo from the neighbour stating he used his weed puller, the Garden Claw, and that he did so without permission as he thought he was helping out. The neighbour stated that he was helping the tenant to get a head start on the weeds taking over the rental unit front yard and his neighbouring garden.

The tenant submitted that there was a dead and dying tree throughout the tenancy and the landlord was notified, but did nothing. Another neighbour wrote the landlord a letter about the dead tree, requesting it be removed. This letter from the neighbour also said that the rental unit lawn needed extensive landscaping prior to the tenants moving in.

The tenant submitted that they cleaned out the garage; however, the garage door was warped, which allowed dirt and debris to be blown in. The landlord failed to repair the warped door or replace the weather stripping. The tenant submitted a photo of the garage door.

The tenant submitted that although the landlord said spent a lot of money on the lawn, he drove past recently and the yard appeared to have had no work done.

As to the state of the interior, the tenant submitted that they received glowing reviews from the three other homes they have rented in their 14 years of marriage.

The tenant said the carpets were worn, snagged, and torn at the beginning of the tenancy, yet they shampooed and cleaned the carpets twice a year when they lived there.

The tenant submitted that the CIR speaks for itself, as the move-in portion of the CIR shows the condition was poor, and many items were never addressed, such as cleaning the baseboard heaters. The male tenant said he made many repairs during the tenancy and their videos show the several leaks occurring during their tenancy, causing damage. The tenant said the solarium was unusable during the tenancy due to the leaks.

The tenant said the leaks caused a build-up of mold and mildew, which went unrepaired.

The tenants submitted that the home was professionally cleaned at the end of the tenancy and referred to their receipt for \$490.35, dated June 27, 2019.

The tenants submitted that in the five year tenancy, they only saw the landlord 3 times.

Analysis

I have reviewed all oral, photographic, and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules);

however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their obligation to prove their claim and the claim fails.

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

In this case, the landlord has the burden of proof to substantiate her claim on a balance of probabilities.

Section 37 of the Act, in part, requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Under sections 23(3) and 35(3) of the Act, a landlord or agent must complete and sign a condition inspection report in accordance with the regulations and the Act. The Act provides that the landlord and tenant inspect the rental unit together.

In this case, the parties conducted a move-out inspection; however, I note that the move-out portion of the CIR was not signed by the landlord. I therefore was not able to rely on that CIR as to the state of the rental unit as it was not signed.

Weed control, lawn repair, soil, seed-

As to the condition of the lawn, I have reviewed the landlord's evidence and compared them with the tenants' evidence. I accept the tenants' photographs that were of the same range and distance and find that the yard was in nearly identical condition at the beginning and end of tenancy. The landlord's own photographs showed weeds in the front yard, and I therefore find the tenants cannot be held to a higher standard so as to leave the lawn improved.

I was also influenced by the signed, written letter of another neighbour who stated that the yard needed landscaping before the tenants moved in.

I find the neighbour's letter stating he took it upon himself to use his weed removal tool which left holes in the yard to be compelling. I cannot find that the tenants can be held responsible for the actions of a neighbour.

For the above reasons, I dismiss the landlord's claim for weed control, lawn repair, soil, seed due to insufficient evidence.

Garage cleaning-

I find the tenants' photographic evidence and testimony showing the garage door to be warped compelling and undisputed. I find it just as likely as not that the warped door caused dust and debris to be blow into the rental unit.

Additionally, the move-in CIR, signed by the landlord's agent, notes that the garage was "dirty & debris, materials left, needs clear out".

From the photographic evidence, I find the garage was in an improved state than at the beginning of the tenancy.

I therefore dismiss the landlord's claim for garage cleaning.

Interior cleaning, carpet cleaning, fireplace cleaning-

As to the interior of the home, I find I could not rely upon the landlord's photographic evidence. These undated photos strongly suggested that they were the listing photos, not taken during the move-in inspection, as they were long-range shots of rooms and many were duplicated. The landlord attempts to hold the tenants responsible for items of cleaning by showing a close-up photo, but not providing a duplicate photo from the beginning of the tenancy.

I also was unable to determine from some of the landlord's photographs what the landlord attempted to prove that would be the tenant's responsibility.

I also note that the landlord did not attend the move-in inspection and is not able to provide first-hand knowledge of the move-in condition. I further note that there were many items mentioned on the move-in inspection. For instance, the hood fan was dirty,

there was some wear on the burners, a closet door was off its track, there were pulls on the carpet, stains around the fireplace, and the main bathroom cabinets and mirror were not cleaned.

It is further noted that there were many other items listed showing the rental unit was unclean and in need of repairs on the move-in CIR, too numerous to list here.

I accept the tenants' undisputed evidence that they paid for a professional cleaner at the end of the tenancy which I find shows that the tenants were aware of their obligation under the Act.

When I review the landlord's evidence as described above and compared it with the tenants' evidence as described above, I find the tenants more than met their obligation under the Act to leave the rental unit at least, if not more than, reasonably clean.

I therefore find the landlord submitted insufficient evidence to support her claim for carpet steam cleaning, interior cleaning and fireplace cleaning, and dismiss this portion of her claim, without leave to reapply.

Loss of rent revenue-

As of the date of the hearing, four months after the tenancy ended, the landlord confirmed she had not attempted to re-rent the rental unit. I find the landlord has not presented sufficient evidence to show how the condition of the yard, which is a cosmetic issue, has prevented her attempts to re-rent.

I therefore find the landlord submitted insufficient evidence to prove that she took reasonable measures to minimize her claimed loss.

I dismiss the landlord's claim for loss of rent revenue, without leave to reapply.

Further, I dismiss the landlord's claim for recovery of the filing fee, as her application has not been successful.

Tenants' security deposit-

Due to the above findings, I find the landlord submitted insufficient evidence to support her monetary claim against the tenants and have dismissed 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 \$1,500.00 and their pet damage deposit of \$1,500.00, or \$3,000.00 in total, 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 \$3,000.00, which is attached with the tenants' Decision.

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 and pet damage deposit, immediately, and the tenants are granted a monetary order for those deposits in the amount of \$3,000.00 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: November 13, 2019

Residential Tenancy Branch