



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for alleged damage caused by the tenants; and
- recovery of the filing fee paid for this application.

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

The parties confirmed receiving the other's evidence.

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

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 parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Preliminary and Procedural Matters-

During the hearing, when I asked the landlord some questions about her claim, the landlord appeared to take exception to the questions, saying she understood what point I was trying to make.

I then informed the landlord I was not making a point, only seeking information that would be important in analyzing her claim.

I then informed the landlord that I would not seek any further information from her by asking any questions, and that as it was her burden of proof in this matter, I instructed the landlord to provide any further testimony she believed was appropriate.

Additionally, the rental unit address listed in the landlord's application did not provide the unit number, which was on the written tenancy agreement and referred to in the hearing. I therefore amended the landlord's application, to include the unit number for the rental unit address.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The undisputed evidence presented at the hearing shows that this tenancy began on October 1, 2017, and ended on February 27, 2019. The monthly rent was \$1,675 and the tenants paid a security deposit of \$837.50 and a pet damage deposit of \$400.

The landlord has retained the security deposit and pet damage deposit, having made a claim against them with this present application.

The landlord's monetary claim is \$250 for a cleaning fee and \$500 for damage to the door.

The landlord's relevant evidence included a photo of a door, an estimate for door repair, a cleaning invoice, an email to the tenants regarding the door damage, and a prior Decision of the Residential Tenancy Branch (RTB) by another arbitrator.

The prior Decision, dated October 22, 2019, was based upon the tenants' application for a return of their security deposit and pet damage deposit. The other arbitrator ultimately dismissed the tenants' application, with leave, as she determined the tenants had not provided their written forwarding address in a manner complying with the Act.

The other arbitrator also ordered the landlord to file her own application claiming against the security deposit and pet damage deposit or refund the deposits within 15 days of October 22, 2019. I note the landlord's application was filed on November 5, 2019.

The landlord confirmed that there was not a move-in or move-out condition inspection report (CIR). The landlord said there was no need for an inspection as the rental unit was brand new when the tenants moved in and any damage would have been done by the tenants.

The landlord provided the following relevant evidence in support of her claim-

Cleaning-

The landlord submitted that the tenants did not properly clean the rental unit and as such, it was necessary to hire a cleaner. The landlord noted the stove was dirty and greasy and there was pet hair.

The landlord submitted that the tenants agreed to pay for cleaning, although they never agreed upon a price.

Door damage-

The landlord submitted she did not notice the damage to the door during the walk-through with the tenants, but did when she was cleaning the rental unit.

The landlord confirmed that the door has not yet been repaired, as she wanted to wait the results of the present hearing.

Tenants' response to the landlord's application-

Cleaning-

The tenants submitted that they did discuss paying for some of the cleaning, but they never agreed to a price. Tenant RO said they cleaned the entire time they were packing and that the kitchen was clean. The tenant said they were shocked at the amount on the invoice, as they did clean and vacuum. The tenant submitted that there was no pet hair to clean.

Door damage-

Tenant ML said they have seen the picture of the door submitted by the landlord, but were not sure what door that is.

The tenant submitted they did receive the landlord's letter about the door on April 8, 2019, but that the request surprised them so long after the tenancy ended.

The tenant submitted that they had not seen any damage to the door.

The tenants' relevant evidence included the written tenancy agreement, written statements and an email thread between the parties.

Analysis

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.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations.

It is important to note that in this case, the landlord has not submitted a move-in or move-out condition inspection report, confirmed there was not one, nor was there proof that there was an inspection of the rental unit with the tenant at the beginning, as is the obligation of the landlord pursuant to sections 23 and 35 of the Act.

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.

Cleaning-

The landlord did not provide a photograph so that I could assess whether the state of the rental unit was not left reasonably clean and there was no move-out CIR noting that the rental unit was not properly clean.

Additionally, I find the landlord's evidence to be inconsistent and therefore, not reliable. For instance, she said that she hired a cleaner and provided the invoice; however, in her email of April 8, 2019, to the tenants, the landlord mentions that she noticed the door damage when she was cleaning the rental unit.

Due to the lack of a CIR and a photograph showing that the rental unit was not left reasonably clean and to the inconsistent evidence provided by the landlord, I find the landlord submitted insufficient evidence to support her claim for cleaning.

I dismiss the landlord's claim for cleaning.

Door damage-

The landlord's position is that there was no need for a CIR or an inspection as the rental unit was new when the tenant's moved in. I do not find that to be a reasonable stance. The landlord's emails to the tenants show that she was dealing with other issues with the builder, such as a crack in the wall.

Additionally, the landlord submitted that more than a year after the tenancy ended, she has not repaired the door. For this reason, I find the landlord has not proven that she incurred a loss.

Therefore, the claim fails. I dismiss the landlord's claim for door damage due to her insufficient evidence.

As the landlord's monetary claim has been dismissed, I also dismiss the landlord's request to recover the filing fee.

As I have dismissed the landlord's monetary claim against the tenants, I order the landlord to refund the tenants' security deposit of \$837.50 and their pet damage deposit of \$400, or \$1,237.50 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 \$1,237.50.

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 and pet damage deposit, immediately, and the tenants are granted a monetary order in the amount of those deposits in the amount of \$1,237.50 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: March 23, 2020

Residential Tenancy Branch