Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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) for:

- compensation for a monetary loss or other money owed; and
- recovery of the filing fee paid for this application.

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

The parties confirmed receiving the other's evidence, though the landlord said the tenant's evidence was late. The landlord also mentioned that she was unable to upload a condition inspection report (CIR).

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic 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 (Rules). 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.

Preliminary Issue-

I note that the written tenancy agreement submitted by the landlord showed the tenant's legal name, although the landlord did not use this name on her application. Further, the tenant mentioned in the hearing her name used in the application was incorrect. As a result, I have amended the name of the tenant/respondent to reflect the correct legal name.

Issue(s) to be Decided

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

Background and Evidence

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

The evidence showed that this tenancy began on December 15, 2016, ended on or about October 30, 2019, and that the beginning monthly rent was $2,350. The tenant paid a security deposit of $1,175, which the landlord has retained, having made this application against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Stove/oven replacement	$1,510
2. Filing fee	$100
TOTAL	**$1,610**

The landlord's additional relevant evidence included photographs of the interior of the oven, a quote for an oven replacement, a photo of the cleaning product used in cleaning the oven, and communication with the tenant.

The participants provided the following evidence in support of, and in response, to the landlord's application:

The landlord submitted that the rental unit was brand new and in mint condition when the tenant moved in.

The landlord submitted that the oven was damaged beyond repair and will need to be replaced, but that it has not yet been replaced. In explanation, the landlord submitted that the cleaning product used by the cleaners hired by the tenant caused significant damage to the non-stick finish in the oven interior. The landlord submitted that they contacted appliance suppliers and repair persons and the oven back and walls cannot be replaced.

The landlord confirmed that when the parties inspected the rental unit on October 30, 2019, she did not notice the damage, due to poor lighting. The landlord also confirmed that at the walk-through inspection with the tenant on October 30, 2019, she did not have the paperwork to complete.

The landlord said that she noticed the oven damage a few days later and took the photographs, which she in turn, sent to the tenant by email.

In response to my inquiry, the landlord confirmed that there are now other tenants occupying the rental unit.

Tenant's response-

The tenant submitted she kept the home in excellent, clean condition for three years, as if it were her own, and had cleaned the rental unit perfectly herself; however, the landlord wanted her to hire a professional cleaner, which she did.

The tenant denied damaging the oven and said that during the walk-through on October 30, 2019, the landlord said the rental unit was in good condition. The tenant denied there was a move-in or move-out inspection.

The tenant submitted that the landlord did not fill out any forms on October 30, 2019, and that she later filled out the form and signed it without giving her a chance to sign or disagree.

The tenant submitted that if the oven was damaged, it occurred after she moved out.

The tenant submitted that the landlord agreed to let the cleaning company clean the rental unit and should have provided instructions as to what cleaner to use.

The tenant submitted that the oven was not worth what the landlord's quote showed and that there was a local contractor who could paint the inside of ovens with a high, heat-resistant enamel paint, for a cost of $225, plus tax.

Analysis

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.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report.

In this case, I find the evidence shows that the meeting between the landlord and tenant on October 30, 2019, was more of a walk-through, and not a condition inspection.

The Act and Residential Tenancy Regulations contemplate that the landlord will have available the CIR at the final inspection so that both parties have the opportunity to record notes and their own comments at the time, and in this case, there was no such opportunity as the landlord did not have the CIR with her. Instead, she filled out the document several days later and asked the tenant by email to sign it. It was at this time the landlord first mentioned the matter of alleged damage, rather than when the parties had the walk-through.

I therefore find the landlord failed to comply with her obligation under the Act.

I also do not find it reasonable that the landlord would not be able to detect the claimed damage to the oven interior on the move-out walk-through, as simply opening the oven door would show it. I did not find the landlord's assertion that the lighting was poor due

to some light bulbs being out to be compelling or persuasive and the landlord failed to dispute the tenant's assertion that the rental unit was in good condition.

I also reviewed the photo of the cleaning agent used by the cleaner said to have caused the damage to the interior of the oven. I was unable to read the instructions and therefore unable to determine that the cleaning agent was used improperly.

Finally, I find the landlord failed to submit proof that the oven required replacing. For instance, the oven is currently being used by other tenants, months after the tenancy ended, and there were no statements from a professional showing that the oven was beyond repair.

Due to the lack of a compliant condition inspection report or other evidence of the state of the rental unit at the final walk-through, other unsupported evidence as noted above, and the disputed verbal evidence of the parties, I find the landlord submitted insufficient evidence to support her claim for the costs of an oven replacement.

I therefore dismiss the landlord's application in full.

As I have dismissed the landlord's monetary claim against the tenant, I order the landlord to return the tenant's security deposit of $1,175, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $1,175, which is included with the tenant's Decision.

Should the landlord fail to pay the tenant this amount as ordered, 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 tenant's security deposit, immediately, and the tenant is granted a monetary order in the amount of that deposit in the amount of $1,175 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: April 14, 2020

Residential Tenancy Branch