



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution. The participatory hearing was held, by teleconference, on June 29, 2020. The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit; and,
- authorization to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both Landlords and both Tenants attended the hearing. All parties provided testimony. I note the Landlords took issue with the fact that the Tenants left their evidence under the their door mat, rather than in the mail or on the door. However, the Landlords acknowledged receiving the evidence package on June 10, 2020. Ultimately, the Landlords received the documents, and I find the Landlords were sufficiently served with the Tenants' evidence package within the appropriate time frame (no later than 7 days before the hearing). Further, the Tenants acknowledge getting the Landlords' evidence package and notice of hearing. I find both parties sufficiently served the other party with their evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order for damage to the unit or for damage or loss under the Act?
- Are the Landlords authorized to retain all or a portion of the Tenants' security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Background and Evidence

Both parties provided a substantial amount of conflicting testimony during the hearing. However, in this review, I will only address the facts and evidence which underpin my findings and will only summarize and speak to points which are essential in order to determine the issues identified above. Not all documentary evidence and testimony will be summarized and addressed in full, unless it was specifically pointed out by the parties and is pertinent to my findings.

Both parties agree that:

- The Tenants moved into the rental unit on around January 15, 2019, and moved out on January 30, 2020.
- A move-in condition inspection was completed at the start of the tenancy, and the parties both signed and agreed to the move-in portion of this report as being accurate. A move-out inspection was done, but the Tenants did not agree with the Landlords' characterization of the rental unit, so they selected the box that they did not agree with the report contents.
- The Landlords collected \$3,750.00 in total for a security and pet deposit at the start of the tenancy, and they returned \$1,437.87 on February 8, 2020. The Tenants acknowledge getting this amount back but stated they never agreed the Landlord could retain this amount.
- The Landlords still hold \$2,312.13 in deposits, which is the amount they are seeking on this application.
- The Landlords sold the house shortly after the Tenants moved out, and are no longer owners of the property.

The Landlords stated that when the Tenants moved out, they were scrambling to try and get estimates and quotes done to get an idea what the costs would be to clean and fix the house before it sold. The Landlords were asked if they had actually completed any of the work or paid for the estimated amounts, but they had not, and stated they are "pending". During the hearing, I asked how the Landlords planned on completing the

cleaning and repairs to the house, in the event they were successful with their claim, given they had already sold the house. One of the Landlords responded by saying “how is this relevant”?

The Tenants feels the Landlord is trying to make them pay for normal wear and tear. The Tenants do not feel they are responsible for any of the items, with the exception of the light bulbs that were burned out. The Tenants agreed to pay for these light bulbs (item #2 below). The Tenants took issue with the Landlords’ claim, in general, because they are no longer owners, and simply want to collect money, and not complete the work.

The Landlords are seeking \$2,312.13 in compensation for 11 items, as follows:

1) \$155.68 – Light Fixture

The Landlords stated that the Tenants broke a light fixture in the entrance hallway, and it was not broken at the start of the tenancy. The Landlords stated that the light was around 25 years old, but it was in okay shape at the start, and part of frame was broken at the time the Tenants moved out. A picture was provided into evidence of the broken light. The Landlord stated they have not repaired the light, and this is an estimate only.

The Tenants deny that they broke this light, and stated it cracked due to its age, not because of any damage they caused.

2) \$41.12 – Light Bulbs

The Tenants agreed to pay for this amount, as they acknowledge they didn’t replace several bulbs in the rental unit.

3) \$92.37 – Fridge drawer

The Landlords stated that the refrigerator was around two years old at the start of the tenancy, and one of the crisper drawers had a crack in it when the Tenants moved in, but when they moved out, both crisper drawers had cracks. The Landlords provided an estimate for this repair, but stated they have not yet completed the repair. The landlords provided photos of this issue.

The Tenants stated that the drawer cracked from normal use and given the other drawer was broken before they moved in, and it was only 2 years old, this indicates the drawers are pretty cheap and poorly made.

- 4) \$144.90 – Furnace Cleaning
- 5) \$257.25 – Furnace duct cleaning

The Landlords stated that the Tenants failed to clean the ducts or the furnace before they moved out, despite having pets. The Landlords provided photos of the debris and dirt in the relevant areas. The Landlords stated that they didn't complete any of this work, and only obtained estimates to get the work done.

The Tenants stated that, as per the Policy Guidelines, cleaning and maintenance of furnaces are the responsibility of the Landlords, not the Tenants. The Tenants stated they cleaned the furnace filter, but do not feel they are responsible for either of these amounts.

- 6) \$136.50 – Light Fixture Repair and Reinstall
- 7) \$34.13 – Repair Cabinet drawer
- 8) \$34.13 – Replace light bulbs
- 9) \$355.05 – Repair water damage around shower

The Landlords provided a written estimate from their handyman who detailed the above items. The above amounts included labour, travel time and general costs. The Landlord stated that none of these amounts have been spent and the work has not yet been performed. The Landlords stated that this work is "pending". The Landlords stated that one of the cabinet drawers was off centre and needs fixing, as does the broken light fixture mentioned above in #1. The Landlord is also seeking the labour costs to replace the light bulbs. The Landlord further stated (point #9), that the shower leaked water, and damaged the drywall. The Landlords feel this was caused by the Tenants not closing the door properly.

The Tenants stated that the shower leaked due to failed caulking, and they told the Landlord about this right away a couple of months after they moved in. The Tenants deny causing any damage to the drawer or the light fixture.

10)\$941.00 – Rear Gate Repair

The Landlords stated that around February 9, 2019, the Tenants sent them an email telling them that the rear gate was laying on the ground and had broken off. The Landlords provided photos of the gate repairs, and stated that part of the gate had to be re-welded and reinstalled. The Landlords stated that they could not get anyone interested in doing the work, so that Landlords had to complete the repair themselves, at their shop. The Landlords drafted up an invoice, to reflect what may have been charged by a professional doing the job. The landlord included travel time, mileage, 4 hours labour, shop supplies, and taxes, totalling \$941.00. The Landlords stated that the only way for this damage to have occurred was if the Tenants left the gate unlatched.

The Tenants provided a copy of a news article which shows that on the night the gate fell off, there was a large widespread windstorm, which caused damage across the lower mainland. The Tenants stated that the gate simply blew over in the windstorm, and it was not due to leaving it unlatched or any other neglect. The Tenants feel they should not be responsible for this item, as they had no control over the wind blowing it over.

11)\$120.00 – Cleaning estimate

The Landlords stated that they called a cleaning company and got an estimate as to how much it would cost to have them come and do some more cleaning. The Landlords stated that the Tenants did a quick clean, and it was not as thorough as they were hoping for. Some photos were provided. The Landlords stated that they never actually paid for or completed this work, and it is “pending”.

The Tenants stated they hired a professional cleaning company to do the final cleaning, and they feel they left it in a reasonably clean state. The Tenants stated they cleaned the carpets as well, and they do not feel they are liable for any further cleaning.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur a loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Overall Findings

First, I note the Tenants agreed to pay for the light bulbs they failed to replace at the end of the tenancy. The landlords had listed \$41.12 for this item (item #2 above). I award this item, as it was an item both parties agreed the Tenants are responsible for.

I note the Landlord promptly sold the rental unit, shortly after the tenancy ended, and none of the work was actually completed, paid for, or performed, aside from the gate repair (item #10). The gate repair item will be addressed further below.

With respect the remaining items (#1, 3, 4, 5, 6, 7, 8, 9, 11), I note the Landlords obtained either verbal or written estimates for these items, but the work has not been done, and is "pending". I note that in order to sufficiently establish a claim for damage or loss under the *Act*, the applicant, in this case the Landlords, must provide evidence to show that a loss was incurred, as part of the 4 part test above. There is insufficient evidence that the Landlords incurred any loss for items 1, 3, 4, 5, 6, 7, 8, 9, and 11, given no money was spent, the work was not completed. The Landlords no longer have the ability to complete the work, as they are no longer owners.

The Landlords also provided no evidence to suggest that the sale price of their house was compromised or reduced as a result of any of the alleged damage or issues above. Ultimately, the Landlords have failed to establish that they incurred or will incur any actual loss as a result of any of the items 1, 3, 4, 5, 6, 7, 8, 9, and 11. I dismiss their application for these items, in full, without leave.

Next, I turn to the Landlords' request for item #10, which is for \$941.00 to repair the rear gate. I accept that the gate broke around February 9, 2019, when the Tenants were residing at the property. I note the Landlords feel the only way for the gate to have broken in the way it did was if the Tenants failed to latch it prior to the windstorm. However, the Landlords have provided insufficient evidence to establish that the Tenants failed to latch the gate or that this is the only way the damage could have occurred. I note the Tenants have provided a news article which corroborates that there was a significant wind event that night, which caused widespread damage. I find the landlords are responsible for the maintenance and repair of this item, particularly given they have failed to sufficiently demonstrate that the issue with the gate was caused by any direct or indirect actions or neglect from the Tenants, rather than from the significant wind storm that occurred. I dismiss this item, in full.

As both parties agreed the Tenants should have to pay for the light bulbs (\$41.12), I award this amount to the Landlords. The Landlords are hereby authorized to retain this amount from the deposits currently held (\$2,312.13), which leaves \$2,271.01 in deposits.

Since the Landlords were largely unsuccessful in their application, I decline to award the cost of the filing fee.

The Landlords must return the remaining security and pet deposits currently held, in the amount of \$2,271.01. I award the Tenants a monetary order for this amount.

Conclusion

The Tenants are granted a monetary order in the amount of \$2,271.01. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: June 30, 2020

Residential Tenancy Branch