



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants; and
- authority to keep the tenants' security deposit to use against a monetary award.

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

Although the landlord sent his Application for Dispute Resolution, evidence, and Notice of Hearing (application package) in one envelope to both tenants rather than separately, they confirmed having received the landlord's application and evidence. The landlord confirmed receiving the tenants' evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary 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.

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

The landlord submitted a written tenancy agreement showing a tenancy start date of August 1, 2018, a fixed term through July 31, 2019, monthly rent of \$1,850, due on the 1st day of the month, and a security deposit of \$925 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The landlord retained the tenants' security deposit, having made this claim against it.

The landlord's monetary claim is \$1,575, for repair of floor damage.

Filed into evidence was a copy of the flooring quotation.

In support of his application, the landlord submitted the tenants caused damage to the engineered hardwood flooring in the rental unit.

The landlord said there was no damage to the flooring when the tenants moved in and they are responsible for repairing of the scratches and indentation caused by their furniture. The landlord further submitted that the tenants agreed to pay for the costs, as shown in the emails between the parties. Filed into evidence were copies of email correspondence between the parties.

In response to my inquiry, the landlord said there was no move-in inspection report as a professional broker handled the move-in and because there was no damage to report.

Further, the landlord said there was a move-out inspection report, in the form of the emails between the parties mentioning damage to the floors.

Also filed into evidence were photos of the flooring taken during the move-out.

Tenants' response-

The tenants submitted that their emails reflect that they agreed to pay for any damage that was reasonable wear and tear; however, as there was not a move-in inspection done or a report, they are uncertain that there was any excessive wear and tear.

The tenants submitted further submitted that there was a lot of emotions at the move-out and they felt pressured to agree to any damage.

The tenants submitted that they used floor protectors under their heavy furniture, as well as a rug under the couch and coffee table.

The tenants submitted photographs of the rental unit from the beginning of the tenancy and from the end of the tenancy, showing a clean rental unit. The photographs from the beginning of the tenancy was from the professional broker taken before the tenants moved in, showing a large sectional couch, coffee table, and bar stools, among other items of furniture.

Analysis

Test for damages or loss

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 each of 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 damages or 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 whatever was reasonable to minimize the damage or losses that were incurred.

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 the onus to prove their claim and the claim fails.

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.

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

As to the landlord's claims against the tenants for damage to flooring, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports.

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 the case before me, the landlord confirmed there was no move-in inspection or a condition inspection report. The landlord denied he had the responsibility to do so as there was no damage to report.

The landlord also said the emails between the parties was the move-out inspection report.

I find the clear evidence is that the landlord failed in his requirement under the Act of conducting an inspection of the rental unit with the tenants and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the landlord's photographs taken at the end of the tenancy did not prove the tenants caused damage to the floor, as there were no corresponding photographs from the beginning of the tenancy.

I also find the emails between the parties was not an inspection report and the email from the tenant shows that they only agreed to be responsible for damage above reasonable wear and tear.

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

As I have dismissed the landlord's monetary claim against the tenants, pursuant to section 62(3) of the Act, I order the landlord to return the tenants' security deposit of \$925, 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 \$925, which is included 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 cautioned 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 the security deposit in the amount of \$925, 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: December 7, 2020

Residential Tenancy Branch