



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction

This hearing dealt with 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.

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.

Thereafter both 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.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the

hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support their monetary claim, which includes recovery of their filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of June 1, 2019, a fixed term through May 31, 2020, monthly rent of \$1,750, due on the 1st day of the month, and a security deposit of \$875 being paid by the tenant 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 tenancy ended in March 2020.

The landlord retained \$310 from the tenant's security deposit, having made this claim against it. The landlord said he returned \$555 to the tenant and the tenant confirmed receiving that amount.

The landlord's monetary claim is \$530, comprised of \$310 for cleaning/garbage, \$120 for wall repair, and \$100 for the filing fee.

The landlord said that the residential property was sold, which prompted the end of the tenancy.

In support of his monetary claim the landlord submitted the tenant did not properly clean the rental unit prior to moving out, which required him to hire a cleaning company. The landlord submitted photographs of the rental unit, which showed they were taken by a real estate agent. Filed into evidence was a handwritten receipt on a tear-away page from a notebook and a photo of what the landlord described as the cleaner's name card, which was a combination of English and another language.

The landlord submitted that he was required to patch the walls, for which he charged the tenant \$120, at \$30 per hour. The landlord submitted that he was entitled to this amount, per the clause in the addendum to the tenancy addressing cleaning at the end of the tenancy. In part, this clause stated, "If Landlord or Landlord's agent is required to do any of this work on your behalf, a rate of \$30 per hour will be charged and deducted from the security deposit."

The landlord said that there was a move-in condition inspection report (Report) and he confirmed he has not filed into evidence a copy of the Report.

The landlord said there was not a move-out Report, due to the on-set of Covid-19 and to the fact he sold the residential property and the new owner accepted the property in an as-is condition. The landlord confirmed the new owner had inspected the residential property, prior to the purchase.

The landlord said when the new owner took possession of the property, they requested the landlord clean the premises, and the cleaning took place in early April.

Tenant's response –

The tenant submitted that the rental unit was filthy and in need of repair when he moved in. The tenant submitted that he and the landlord had an agreement that the tenant would clean, paint, and make repairs to the rental unit, and in turn, the tenant would not have to clean further or make repairs. The tenant submitted that the landlord agreed to reimburse him for painting and supplies by way of a rent deduction; however, the landlord failed to reimburse him the actual amount incurred. Filed into evidence to support this statement were copies of text messages between the parties and an e-transfer from the tenant to a painter.

The tenant said that there was not a move-in or move-out Report. The tenant said that he had an extreme amount of cleaning to do at the start of the tenancy, and referred to his photographs filed into evidence taken at the move-in.

The tenant submitted that if there was anything left behind, it was there when he moved in. The tenant submitted that the landlord instructed him to put the previous tenants' belongings into storage. The tenant submitted that the condition of the rental unit was far better than at the beginning of the tenancy. Filed into evidence were copies of text message between the parties and a video of the belongings.

The tenant submitted that the landlord decided to sell the residential property after seeing the improvements that he made during the tenancy.

The tenant denied leaving any wall damage and if there were nail holes, they were not excessive and were used as part of his living space.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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 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 what 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 what was reasonable to minimize the damage or losses that were incurred.

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.

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 confirmed there was not a move-out condition inspection report and there was no evidence that there was a move-in Report. The tenant denied there was a move-in inspection or Report and absent evidence to the contrary from the claimant, I accept that there was not a move-in Report. I also find there was no proof that there was an inspection of the rental unit with the tenant at the beginning or end of the tenancy, as is the obligation of the landlord pursuant to sections 23 and 35 of the Act.

Section 21 of the Regulations provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Cleaning; wall repair –

In this case, the evidence shows the landlord did not conduct a move-in or move-out inspection with the tenant. Additionally, the landlord only provided undated photos of the condition of the rental unit, taken by a third party, a real estate agent. I was not provided the date the photos were taken and the landlord said that the cleaning did not take place until sometime in April 2020. It was unclear if the photos were from the beginning, during, or end of the tenancy.

An inspection report is important as it allows both the landlord and the tenant to comment on the condition of the rental unit. Without that document, I could not assess whether or not the state of the rental unit at the end of the tenancy was left reasonably clean.

Therefore, I could not determine whether any damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed that were caused by the tenant.

I also find the landlord's evidence said to be a receipt from the cleaning company to be insufficient. The document was handwritten, on a piece of notebook paper, and undated. Further, the document did not provide a breakdown of the costs or hours spent.

I also found that the landlord's photographs were not persuasive, as he did not take them and it was not clear when they were taken. Rather, I found the tenant's photographs and text message evidence compelling and persuasive that when he moved in, the rental unit was excessively unclean, was damaged, and full of the former tenants' personal property.

In addressing the landlord's position that he is entitled to make deductions from the tenant's security deposit for cleaning and repair, I informed the landlord at the hearing that the clause in the written tenancy agreement allowing for automatic deductions from

the tenant's security deposit is contrary to the Act and is therefore, not enforceable. Parties may not contract outside of the Act in tenancy matters.

For these reasons, I find the landlord submitted insufficient evidence to support his monetary claim against the tenant for damage to, and cleaning of, the rental unit.

Therefore, I dismiss the landlord's application, including his request for recovery of the filing fee.

As I have dismissed the landlord's application where he is seeking to retain the remaining portion of the tenant's security deposit held of \$310, I order the landlord to return \$310 to the tenant, 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 \$310.

Should the landlord fail to pay the tenant 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.

I find it important to note that both parties confirmed that the landlord returned a portion of the tenant's security deposit in the amount of \$555, and retained \$310. These two amounts do not total \$875, leaving a \$10 deficiency from the original security deposit; however, my Decision reflects the testimony of both parties.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The landlord is ordered to return the remaining portion of the tenant's security deposit of \$310 immediately and the tenant is granted a monetary order in the amount of \$310 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 30, 2021

Residential Tenancy Branch