



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFL FFT MNDCL-S OPC

Introduction

The tenants applied for various relief under the *Residential Tenancy Act* ("Act"). By way of a cross-application the landlord applied for a monetary order.

The landlord, along with a friend, and one of the tenants, attended the hearing. In respect of service of evidence, the landlord served their evidence rather late, but the tenant acknowledged that they had sufficient time to review the landlord's evidence.

Rule 6.11 of the *Rules of Procedure* was explained to the parties, in respect of the prohibition on recording the hearing.

Last, it should be noted that relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve both the preliminary issue, and the primary issue of this dispute, and to explain the decision, is reproduced below.

Preliminary Issue: Tenancy Has Ended

The tenancy ended on October 31, 2021 when the tenants vacated the rental unit. As such, the tenants' application for an order cancelling a notice to end tenancy is moot and is accordingly dismissed without leave. Their claim for recovery of the application filing fee is also dismissed without leave. Similarly, the landlord's application which, *inter alia*, sought an order of possession is now also moot, and that aspect of the landlord's application is dismissed without leave to reapply.

The only remaining issue to be decided, other than whether the landlord is entitled to recover the cost of the application filing fee, is whether the landlord is entitled to compensation under section 67 of the Act.

Issue

Is the landlord entitled to compensation?

Background and Evidence

The tenancy began on March 1, 2015 and as noted above, ended on October 31, 2021. Monthly rent was \$1,400.00 and the tenants paid a security deposit of \$700.00. This security deposit is held in trust by the landlord pending the outcome of this matter.

The landlord seeks \$4,981.82 in compensation from their former tenants for various costs related to repairs, cleaning, painting, appliance replacement, blinds, faucets, and so forth. The individual twelve items are itemized and broken down within a Monetary Order Worksheet which was submitted into evidence by the landlord. Also submitted into evidence were various receipts, and about 50 photographs of the alleged damage.

The landlord testified that the tenants failed to clean the rental unit when they vacated and that they caused various damages, depicted in the photographs. The landlord also testified that the rental unit was in a newly built home, built in 2014, with the tenants moving in thereafter. "Everything was brand new," explained the landlord.

It is worth noting that the landlord did not submit a completed condition inspection report pertaining to the rental unit's condition either at the start or at the end of the tenancy. Also not submitted were any photographs of the rental unit as it was at the start of the tenancy. The landlord did testify that while they did not complete a condition inspection report at the start of the tenancy, there was a report completed (without the tenants' signatures) at the end of the tenancy. However, no copy of this final condition inspection report was anywhere in the landlord's evidence.

The tenants dispute the entirety of the landlord's claim, with the tenant arguing that if there was any damage to the rental unit, or repairs needed, that it was solely caused through reasonable wear and tear. He also noted that the rental unit was *not* brand new at the start of the tenancy. Last, he explained that some of the landlord's photographs were not of the rental unit in question, and instead were of some other property. The landlord did not dispute or otherwise make any note of this particular comment.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

In this dispute, the landlord argued that the tenants did not leave the rental unit reasonably clean and undamaged. The tenants dispute this argument.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim—in this case, the landlord—has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to prove the state of repair and condition of the rental unit at the start of the tenancy

Leaving aside the fact that the landlord did not complete a condition inspection report at the start of the tenancy as required by section 23 of the Act, [section 21](#) of the *Residential Tenancy Regulation* states the following:

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.

There was no condition inspection report before me to determine the state of the rental unit when the tenancy began. And there was in evidence no completed report to provide the required comparison between the start and end of the tenancy which would establish the need for repairs and damage. Moreover, the landlord submitted no photographs of the rental unit at the start of the tenancy to establish the condition of the rental unit.

Thus, taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached the Act. As such, the landlord is not entitled to any compensation.

The landlord's claim for compensation, along with the claim for recovery of the filing fee, are dismissed without leave to reapply.

Given this finding, the landlord is hereby ordered to return to the tenants their security deposit of \$700.00. The landlord must return the tenants' security deposit within 15 days of receiving a copy of this decision. Should the landlord fail to return the security deposit to the tenants, as ordered above, the tenants are at liberty to apply for dispute resolution pursuant to [section 38\(6\)](#) of the Act.

Conclusion

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

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 29, 2021

Residential Tenancy Branch