



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on May 18, 2021, wherein the Landlords sought monetary compensation from the Tenants in the amount of \$4,510.00, authority to retain the Tenants' security deposit and recovery of the filing fee.

The hearing was conducted by teleconference at 1:30 p.m. on November 19, 2021. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. 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.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?

2. Should the Landlords be authorized to retain the Tenants' security deposit?
3. Should the Landlords recover the filing fee?

Background and Evidence

In support of the claim the Landlord, LG., testified as follows. He stated that this tenancy began January 1, 2018. Monthly rent was \$2,400.00. The Tenants paid a \$1,200.00 security deposit and a \$1,200.00 pet damage deposit. The tenancy ended May 15, 2021.

The nature of the claim relates to the Landlords claim that the Tenants caused a leak in the rental unit on May 8, 2021. The Landlord testified that on that date, the Tenant called at approximately 10:00-10:30 a.m. and stated that while he was moving his items out of the rental unit, he noticed water pooling near the kitchen sink. The Landlord attended the rental unit within 15-20 minutes of receiving the call at which time he heard hissing, saw water building up under the sink and turned the main water off. He called a plumber, but due to the long weekend, the plumber could not come for a few days.

The Landlord stated that to his understanding the Tenant had mostly moved out by May 9, 2021 but had not been in the rental unit for a few days. The Landlord suspects that the leak occurred sometime prior to May 9, 2021 given the amount of water present.

The Landlord further testified that the plumber informed him that it was a pinhole leak. The plumber thought that someone had put a hole in the pipe and the Landlord assumed it was done deliberately by the Tenants.

The Landlord claimed he paid \$4,410.00 to repair the damages, including a \$1,000.00 deductible. The Landlord sought recovery of this amount from the Tenants in addition to the \$100.00 filing fee.

In response to the Landlords' claims, the Tenant, G.A., testified as follows. He confirmed they moved out April 24, 2021. He further confirmed they agreed the Landlord could retain their \$1,200.00 security deposit and \$1,200.00 pet damage deposit towards the last months rent.

The Tenant testified that on May 8, 2021 they saw water pooling in the rental unit kitchen. The Tenant further stated that he was in the rental unit a few times cleaning

the garage and laundry room, had been in the house numerous times, but this was the first time they noticed water under the sink.

The Tenant denied putting a pinhole in the pipe. He also denied anyone else did so and noted that the leak is actually under the cabinet/floor. In support he noted that the water was leaking up from under the cabinet as noted in photo #1 submitted by the landlord. In this photo, the bottom of the cabinet has been removed to allow for repair of the pipe below the cabinet but above the floor.

Analysis

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*, which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;

- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case the Landlords allege the Tenants caused damage to the water pipe under the kitchen sink, causing water damage to the rental unit. The Tenants deny causing any damage.

Photos submitted by the parties indicate the pinhole leak was under the kitchen cabinet as the cabinet bottom was removed for the repair to occur. On balance, I find this to be most likely the result of a defect rather than something the Tenants did or failed to do. The Landlords failed to provide any evidence which would support a finding that the Tenants purposely, or accidentally caused this damage. As noted during the hearing these mysteries are not automatically resolved in favour of the Landlord; rather, the Landlord must prove, on balance, that the Tenants are responsible for the losses incurred. In this case, I am not satisfied the Landlords have met this burden. I therefore dismiss their claim in its entirety.

Conclusion

The Landlords' claim for compensation from the Tenants is dismissed without leave to reapply.

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: November 24, 2021

Residential Tenancy Branch