



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied for authority to retain the tenants' security deposit, a monetary order for alleged damage to the rental unit by the tenants, and for recovery of the filing fee paid for this application.

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

The evidence was discussed, and each party confirmed receiving the other's evidence in advance of the hearing. The tenants confirmed receipt of the landlord's application.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

Prior to the start of the hearing, the parties were informed that recording of the hearing was not allowed.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit, to keep all or part of the security deposit, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy start date of March 1, 2020, monthly rent of \$2,650, due on the 1st day of the month, and a security deposit of \$1,225 being paid by the tenants to the landlord. Additional evidence showed the original start date of the tenancy was February 1, 2018.

The tenancy ended on July 5, 2021, according to the landlord, and on June 30, 2021, according to the tenants.

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

The landlord's monetary claim is \$480.38, comprised of \$262.50 for carpet cleaning, \$77.88 for a cabinet mounted garbage can, and \$140 for cleaning.

Evidence filed by the landlord included a condition inspection report (Report), a Home Depot receipt for the garbage can replacement, a carpet cleaning invoice showing cleaning of 3 rooms, hall and stairs, an interac e-transfer to a named individual, emails between the parties, and photographs of locations of certain areas in the rental unit.

The landlord submitted on July 5, 2021, the tenants were picking up their remaining items in the rental unit, at which time he walked around the residential property doing an inspection. The landlord explained that the house had been sold, so he allowed the tenants a period of time to pick-up extra items.

The landlord submitted that the range, refrigerator, and sink were not cleaned. The landlord submitted that the walls needed to be washed. The landlord submitted that there were two small stain spots in two of the rooms, one of which was not detected during the inspection as the carpet was still wet. For these reasons, the landlord submitted he hired a cleaner and carpet cleaning company to remedy the items of concern.

The landlord submitted that the tenants broke the garbage bin attached to the cabinet door under the kitchen sink. The landlord said the garbage bin was bought in 2016 or 2017.

The landlord referred to the photographs filed in evidence, said to be taken on July 7, 2021.

In response, the tenants submitted that the landlord conducted the move-out inspection without the tenants and disputed that they agreed to any deductions, claiming the landlord misrepresented any agreement on the Report.

The tenants submitted a written statement, reproduced as follows:

- *Tenants gave notice they would move out by June 30, 2021 and scheduled move-out inspection for that date. Tenants met landlord at 4:15pm to complete the move out-inspection.*
- *The inspection did not occur as planned. The house was empty, with a few small items remaining in the garage that the tenants discussed making an arrangement with the landlord to remove. The tenants said they could come the next day. The landlord said he was not available and asked to postpone the entire inspection until Monday July 5th at 4:15pm. Tenants agreed (note that this required a four-hour round trip during work hours to accommodate the landlord's schedule).*
- ***Between June 30th after 5pm and before July 5th at 4:15pm, the landlord conducted the inspection and completed the form without the tenants present. This is in contravention to the regulations of the Residential Tenancy Act. And it was in contradiction to the landlord saying that he would not be available until Monday July 5th at 4:15pm.***
- ***When the tenants arrived on July 5th for the inspection, they were presented with a completed move-out inspection report. No actual walk through together was completed.***
- *Given this, the tenants did not wish to sign the move-out inspection report without having time to fully review as the landlord had indicated that he found the home not cleaned to his requirements.*
- *Our understanding was that the landlord would get estimates on work he wanted completed and send those, along with the move-out inspection report to us in a few days.*
- *Tenants did not receive any estimates. Tenants were not given any opportunity to remedy any issues that the landlord identified.*
- ***The tenants did not receive a copy of the move-out inspection to sign until July 16th. The landlord checked a box without the tenant's consent, falsely recording on the form that the tenants agreed that the report fairly represented the condition of the unit. He was notified in person on July 5th and***

in writing on July 7th (via email) that we were not in agreement with his assessment of the condition of the home.

Further, the tenants submitted that they rented equipment and cleaned and shampooed all carpets prior to moving on January 30, 2021. The landlord pointed to a small, blue stain in the smallest bedroom and a reddish stain in the master bedroom, which the tenants claim they had never seen before. Tenant MR said the blue stain was most likely from the detergent used in cleaning, but the landlord did not provide an opportunity to clean up the detergent. The tenant submitted that the Report showed the carpets were clean. Filed in evidence was a receipt for the rental of carpet cleaning equipment.

As to the garbage can, the tenant submitted that they lived in the home for 3 years, 5 months, that the garbage can had a plastic lid and if broken, this was the result of reasonable wear and tear.

As to the cleaning fees, the tenant submitted a written response, reproduced in part as follows.

- *The tenants spent 2 days cleaning the home June 29th to the 30th and left it clean and welcoming and in a state a new owner would be satisfied with.*
- *When we moved into the home, the tenants found a piece of rotting fruit in the fridge, a moth issue that caused damage to expensive wool clothing (costing the tenants several hundred dollars of losses and cleaning bills), caulking that covered up a mildew/mold issue in the shower, a dirty microwave etc. We addressed these ourselves and didn't ask the landlord to clean these up or pay for cleaning costs. As a life-long renter, tenant (tenant name), accepts that some of these oversights happen on both sides and you accept the good intentions and work that was done when in fact the home is welcoming, clean and safe. The tenants assert that the home they rented and left on June 30, 2021 was welcoming and clean, and the landlord used the tenants deposit to go above and beyond what was considered reasonable.*

(Tenant name anonymized for protection of privacy)

The tenant submitted that they cleaned the home at least 10 times during the last two months of the tenancy, to accommodate the showings for the landlord's sale of the home, even though they had received an eviction notice.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

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. Tenants are not responsible for cleaning of the rental unit to bring the premises to a higher standard.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cleaning costs –

I have thoroughly reviewed the photographs submitted by the landlord. I found the sink clean and free of debris. I found the wall to be slightly smudged, but was not provided a photograph of the condition of the wall at the beginning of the tenancy. I was unable to determine what the issue was the landlord referred regarding the refrigerator door, as it looked clean to me.

I did not find the range to be of any concern considering the length of the tenancy.

I agree that the top of one electrical outlet was dusty and the bathroom fan was slightly dusty. However, I find it more likely than not that these items were the result of an oversight by the tenants, considering the move-out condition left by the tenants. I was not provided a photograph of the condition of the fan at the beginning of the tenancy.

Overall, the landlord's photographs show very minor deficiencies in some items, such as a dusty bathroom fan and an electrical outlet. However, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean, or any photographs from the beginning of the tenancy for comparison.

I accept the tenants' testimony and evidence that they cleaned for two days prior to vacating, as my viewing of the landlord's photographs indicated the rental unit was overall left reasonably clean.

Most of the photographs were taken at close-range to the claimed damage or unclean state. On other photographs, instead of seeing damage or unclean conditions, I find support for the tenants' claim that they left the rental unit reasonably clean. If there were marks, I find this to be reasonable wear and tear for a 3 year, 5 month tenancy.

Additionally, I find the landlord submitted insufficient evidence to show what was cleaned. The only evidence was a payment to an individual, with no invoice breaking down the items or areas cleaned. Also, I was not convinced the payment was to a cleaning company, due to the lack of name and address on an invoice.

I therefore dismiss the landlord's claim for cleaning costs without leave to reapply, due to insufficient evidence.

Carpet cleaning –

I find the evidence supports that the tenants cleaned and shampooed the carpet prior to vacating and therefore I find they met their obligation as to carpets. The landlord's invoice showed a carpet cleaning of three rooms, hall and stairs. If the landlord wanted to professionally clean more than the two small marks of concern, one of which was not detected on the move-out inspection, I find that was the landlord's choice. I find no authority under the Act to grant the landlord compensation for their costs in cleaning more than the small items in question on a claim.

I therefore dismiss the landlord's claim for carpet cleaning without leave to reapply, due to insufficient evidence.

Garbage can replacement –

I find the landlord submitted insufficient evidence to prove that the tenants were using the garbage bin negligently, in any manner other than its intended purpose. The tenants denied using the bin in any way other than the usual way and the landlord's evidence failed to prove otherwise on a balance of probabilities.

I also find the landlord's claim for a full replacement cost of an item that had been depreciating since 2016 to be unreasonable.

For these reasons, I dismiss the landlord's claim for a garbage can replacement, without leave to reapply, due to insufficient evidence.

As I have dismissed the landlord's claim for monetary compensation, I dismiss the request to recover the filing fee.

For all the above reasons, I find the landlord submitted insufficient evidence to support his application against the tenants. **As a result, I dismiss the landlord's application in its entirety, without leave to reapply.**

As I have dismissed the landlord's application, I ORDER the landlord to return the tenants' security deposit of \$1,225, 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 \$1,225, which is included with the tenant's Decision. This monetary order is cancelled and of no force or effect if the landlord returns the tenants' security deposit immediately.

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 for the reasons cited above.

The landlord is ordered to return the tenants' security deposit of \$1,225 immediately and the tenants are granted a monetary order in that amount, to be used if necessary.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 6, 2022

Residential Tenancy Branch