



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing convened to deal with the landlords' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on October 13, 2021, for compensation for alleged damage to the rental unit by the tenant, authority to keep the tenant's security deposit to use against a monetary award, and recovery of the cost of the filing fee.

The parties listed on the style of cause page of this Decision attended, the hearing process was explained to the parties, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited.

Thereafter the 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.

Following is a summary of those submissions and includes only that which is relevant to the matters before me.

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

Preliminary Issue –

The tenant denied receiving all the landlord's evidence, stating that he received 4 photographs on a composite page, and invoices for cleaning. The landlord was not clear when or how she served the additional evidence that was not submitted with her application. I therefore excluded the landlord's evidence that the tenant denied receiving.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenant due to alleged damage and to keep the tenant's security deposit in partial satisfaction of their claim, if entitled?

Are the landlords entitled to recovery of the cost of the filing fee?

Background and Evidence

This single room occupancy tenancy began on April 1, 2017 and ended on September 30, 2021. The monthly rent began at \$600 and the tenant paid a security deposit of \$300, which the landlord has retained. Filed in evidence was a copy of the written tenancy agreement.

The landlords' monetary claim is \$687.86 for flooring damage and the cost of cleaning of \$187.69. I note that this figure did not match the claim listed in the landlord's evidence or the monetary order worksheet. The total claim on that worksheet is \$743.41.

In their application, the landlord wrote the following:

Flooring was worn down with tenants personal chair to the point where the flooring is stripped and there is now a bump in the ground. Unit was also uncleaned for the duration of the tenancy as there was layers of dust and cobwebs around the room. To repair flooring both Home Depot and Lowes concluded that to replace; flooring for the room must be disassembled and

underlayer has to be replaced as well. Requesting for the cheapest repair quote as compensation and cost of cleaning services.

The landlord confirmed that there was not a move-in or move-out condition inspection report (CIR).

In support of their application, the landlord provided the following evidence:

Floor damage –

The landlord submitted that the flooring has not been repaired or replaced, and that they received two estimates for replacement. The landlord explained they are claiming for the lower estimate. The landlord submitted that the damage was from the tenant's computer chair, which caused damage as far down as the underlay.

The landlord filed two documents labelled as quotes to replace the flooring.

Cleaning –

The landlord submitted that the rental unit required cleaning after the tenant vacated. The landlord explained that the ceilings had cobwebs and dust, there was mold and the garbage was not removed.

The landlord filed photographs from the rental unit and a cleaning invoice.

Tenant's response –

The tenant expressed shock that it took 2.75 hours to clean the rental unit, as shown by the cleaning invoice. The tenant said that the photos were taken prior to him cleaning the rental unit and they did not show the actual state of the room.

The tenant submitted that the flooring damage was done by his computer chair, but that was only reasonable wear and tear. The tenant submitted that the landlord and their brother were in his room several times over the course of the tenancy, saw the chair, and never said anything.

The tenant submitted that the flooring was veneer and easy to wear off and asserted the whole floor did not need replacing.

The tenant submitted that the room needed a bit of cleaning, but not to the extent claimed by the landlord. The tenant said that the landlords made a false claim, as he received an email from the landlord on October 1, 2021, acknowledging he, the tenant, removed the three bags of garbage.

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-in or move-out condition inspection or report, nor was there 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.

Flooring replacement –

The purpose of compensation is to put the person who suffered the damage or loss in the same position. Having reviewed the evidence, I find the landlord is seeking compensation from the tenant that would put the landlords in a better position.

The landlords' quote is for a full replacement of the entire flooring with laminate, when the flooring now is a veneer-type flooring. I find to grant the landlords this claim would put the landlords in better position than they were in, as I find laminate flooring to be a higher quality than the veneer flooring, installed in 2016.

Additionally, 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 or move-out inspection or a condition inspection report.

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 tenant was beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographs taken at the end of the tenancy did not prove the tenant caused damage to

the floor, as there were no corresponding photographs from the beginning of the tenancy.

Additionally, the landlord confirmed that as of the date of the hearing, they have not incurred any loss for flooring, and I find insufficient evidence from the landlords that they ever intend to replace the flooring. Therefore, the landlord submitted insufficient evidence to prove they have suffered a loss.

For these reasons, due to the landlords' insufficient evidence, I **dismiss** the landlord's claim for flooring, without leave to reapply.

Cleaning –

In this case, the landlord did not conduct a move-in or move-out inspection with the tenant. An inspection report is not only a legal requirement, it is important as it allows both the landlord and the tenant to comment on the condition of the rental unit. The tenant claimed the photographs of the rental unit were taken prior to his cleaning of the room. Without the move-in or move-out inspection report, where the landlord conducts an inspection with the tenant to mark any issues with the state of the rental unit, I find it just as likely as not that the pictures were taken prior to cleaning. I find the landlord submitted insufficient evidence to support their claim. I therefore **dismiss** the landlords' claim for cleaning, without leave to reapply.

For all the reasons listed above, I find the landlords submitted insufficient evidence to support any part of their application, and **dismiss** the landlords' application, including their request to recover the filing fee, without leave to reapply.

As I have dismissed the landlords' monetary claim against the tenant, pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$300, 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 \$300.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlords 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, due to insufficient evidence.

The landlord is ordered to return the tenant's security deposit, immediately, and the tenant is granted a monetary order in the amount of the security deposit of \$300, 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 15, 2022

Residential Tenancy Branch