



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 landlord's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The landlord applied on November 14, 2021 for compensation for alleged damage to the rental unit by the tenant, authority to keep the tenants' security deposit and pet damage deposit to use against a monetary award, and to recover the cost 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. All parties were affirmed.

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, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

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

Preliminary Issue – Evidence

The landlord submitted unlabeled digital evidence to the RTB online digital file. This evidence included photographs of items in the rental unit, cleaning quotes, an email from former tenants, and emails to the tenants regarding a move-out inspection. The landlord confirmed that he did not send any evidence to the tenants, as they believed the tenants could review the evidence online.

The tenant confirmed not sending the landlord evidence, because they had not received evidence from the landlords and were waiting for it. The tenant filed evidence to the RTB online digital file.

The Rules require that each party submit their evidence separately to the other party and to the RTB.

As neither party served their evidence to the other as required, I have excluded all evidence from consideration in this matter. The hearing proceeded on the parties' affirmed testimony.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation from the tenants, to keep the tenants' security deposit and pet damage deposit and recovery of the cost of the filing fee?

Background and Evidence

The landlord submitted that this tenancy began on November 1, 2020, and ended on October 30, 2021. The monthly rent was \$2,600, and the tenants paid a security deposit of \$1,300 and a pet damage deposit of \$650.

The landlords retained the tenants' security deposit and pet damage deposit, having made this claim against it.

The landlords' monetary claim is \$1,939, plus \$100 for the filing fee.

The landlords wrote that they want the tenants to pay for the damage to the property, for cleaning and unpaid utility charges.

The landlord testified that when the tenants moved in, the rental unit had been professionally cleaned. However, the tenants said they were not happy with the condition of the rental unit and he offered them \$300.

The landlord stated the property was handed to the tenants in a clean state and it was not cleaned when they vacated. The landlord stated that the tenants failed to pay all the utilities charges.

The landlord confirmed there was not a move-in or move-out condition inspection report (Report), although he tried to arrange a move-out inspection several days after this tenancy ended.

Tenant's response –

The tenant testified that when they looked at the rental unit when considering the tenancy, there was a big family living there and the rental unit was very dirty. The tenant stated that the landlord was supposed to clean the rental unit prior to their tenancy.

The tenant described that there were food spills all over the curtains, feces left in the toilet, the floor was in bad condition, and they did not know what to do.

The tenant stated they have never met the landlords in person and it was only the previous tenants who let them view the rental unit.

The tenant submitted that the landlords never wanted to do a move-in inspection and that they left the rental unit cleaner than when they moved in.

The tenant submitted that there was no point in having a move-out inspection days after the tenancy ended.

The tenant said they sent the landlord their written forwarding address by email on November 6, 2021.

The landlord used this forwarding address to serve the tenants their application.

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 each of 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 whatever 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 whatever 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, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under section 23 of the Act, the landlord and tenant must inspect the condition of the rental unit on the day the tenant is entitled to possession, or another agreeable date, and a landlord **must** complete a condition inspection report in accordance with the Residential Tenancy Regulations and both parties must sign the report. Section 35 of the Act requires an inspection of the rental unit at the end of the tenancy and the landlord **must** also complete a condition inspection report.

In this case, the undisputed evidence is that there was neither a move-in or move-out inspection of the rental unit, which is to be arranged by the landlord, and the landlord has not completed the condition inspection report as required under the Act. The purpose of move-in/move-out inspection reports is to establish the condition of the rental unit at the start of a tenancy, so a comparison can be made at the end of the tenancy.

In this case, I did not have a move-in or move-out inspection report to review and I have excluded the landlords' evidence. I therefore find the landlords submitted insufficient evidence to show that the tenants failed to reasonably and properly clean the rental unit by the end of the tenancy and leave the rental unit undamaged, except for reasonable wear and tear.

The tenant disputed the condition of the rental unit at the end of the tenancy described by the landlord or that they left the rental unit damaged. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Additionally, although I have excluded the landlords' evidence for failure to serve the tenants, the landlords labelled their documentary evidence as cleaning and damage quotes. I find that the word "quote" shows that the landlords have not incurred costs for cleaning or damage repair.

Due to the above reasons, I find the landlords submitted insufficient evidence to their claim and I therefore **dismiss their application, without leave to reapply.**

As I have dismissed the landlords' monetary claim against the tenants, pursuant to section 62(3) of the Act, I order the landlords to return the tenants' security deposit of \$1,300 and pet damage deposit of \$650, immediately.

To give effect to this order, I issue the tenants a monetary order (Order) pursuant to section 67 of the Act for the amount \$1,950, which is included with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the 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 landlords are cautioned that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application is dismissed, without leave to reapply.

The landlord is ordered to return the tenants' security deposit of \$1,300 and pet damage deposit of \$650, immediately, and the tenants are issued a monetary order in the amount of those deposits in the amount of \$1,950, 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: July 22, 2022

Residential Tenancy Branch