



Dispute Resolution Services

Page: 1

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 for compensation for alleged damage to the rental unit by the tenants, 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's agents and the tenants 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. The tenants confirmed receipt of the landlord's evidence, with the exception of an IKEA listing and photos.

The tenants have filed an application for dispute resolution, for which they said they supplied evidence. However, the tenants have not filed evidence for this application and the tenants' application was not scheduled to be heard with the landlord's application.

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 and Procedural Matters-

On October 14, 2022, the landlord filed a move-in condition inspection report (Report) in evidence. As this evidence was filed 6 days prior to the hearing, I have excluded the move-in Report for consideration. Under the Rules, the applicant was required to file **all** their evidence that was available at the time of their application on February 28, 2022 and serve the other party that evidence and application in a single package. If evidence is not available at the time of the application, it must be filed as soon as possible and served on the other party. In all cases, the applicant's evidence must be filed 14 clear days in advance of the hearing. As the move-in Report was dated June 5, 2020, I find it was available to be filed at the time of the application.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for alleged damage to the rental unit and furnishing, to keep the tenants' security deposit to offset a monetary award, and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on June 6, 2020, and ended on January 31, 2022. Monthly rent was \$2,100 and the tenants paid a security deposit of \$1,050 and a pet damage deposit of \$1,050. The landlord retained the two deposits, having made their claim against them. Filed in evidence was a copy of the written tenancy agreement.

The landlord's monetary claim is \$1,050, and on the monetary order worksheet filed in evidence, the claim was explained as damage to a couch and 2 light fixtures.

In their application, the landlord wrote the following:

Tenants damaged the crystal light fixtures and didn't seek any fixed solution so the owner was trying to find the matched glasses to fit in, but can't find any. Additionally, tenants had dog lived in for 4 months and damaged the leather sofa bed as the pictures provided. The tenants allege those belong to wear and tear.

*We are here to provide conditions before and after tenants moved in and out.
The total replacement value is over \$1050.*

[Reproduced as written]

During the hearing, there was testimony given that the tenants agreed to \$200 being deducted from their security deposit, on the move-out condition inspection report (Report), for light fixture damage. The agents agreed that the total claim to be considered in this dispute was now \$850 for couch damage, as a result of the tenants' agreement to the \$200 deduction. Filed in evidence was the Report.

The agent said that the tenants were provided a couch for this tenancy, and that it was left damaged and unusable by the end of the tenancy. The agent claimed that the dog damaged the couch.

In response to my inquiry, the agents said they never saw the couch, that the landlord/owner to their knowledge did not replace the couch and most likely disposed of the couch. The agent said the subsequent tenants in the rental unit were not provided a couch.

The agents confirmed that neither of the agents present for the hearing had any direct knowledge of the condition of the rental unit or couch and were going from the photographic evidence supplied by the agent working for the company at the time, who was no longer working with the company. Filed in evidence were 3 undated photographs of the couch.

Tenants' response –

The tenant PW said he attended the rental unit at the end of the tenancy for the move-out inspection and that the agent at the time had already completed the move-out Report. The tenant said that the sofa had some wear and tear at the beginning of the tenancy and that any damage was from reasonable wear and tear. The tenant said that the couch was not leather and was a thin, cheap material and that there was already stretching and a tear in the couch prior to the tenancy.

The tenant denied their dog damaged the couch and had the dog been destructive at all, there would have been other pet damage in the rental unit. However, there was none. The tenant said they did not allow their dog on the sofa or any furniture.

Analysis

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.

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.

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.

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.

When considering the totality of the allowed evidence for this dispute, I find the landlord submitted insufficient evidence to support their claim for couch damage. The agents present for the hearing had no first-hand knowledge of the condition of the rental unit or

the couch, at the beginning or the end of the tenancy, using only the photographs filed in evidence. I have reviewed the landlord's photographs. I find the condition of the couch was inconclusive as to whether the damage exceeded excessive wear and tear. I could not determine if the two spots of damage were made by a dog, as I did not see claw or teeth marks.

The landlord submitted a photograph labelled "Before move-in condition", but the photograph was undated. In addition, in this photograph, there were three pillows on the couch, a surge protector power bar on the side of the couch, which was connected to some electronic device obscured by one of the pillows, and a book. I do not agree this was a photograph taken directly before move-in.

Finally, I find the landlord submitted insufficient evidence that they have incurred a loss, typically shown through receipts or invoices.

As a result of the above findings, I find the landlord submitted insufficient evidence to meet their burden of proof for couch damage and I dismiss their claim of \$850, without leave to reapply.

As the tenants agreed to a \$200 deduction from their security deposit for light fixture damage, which was still the case at the hearing, I find the landlord has established a monetary claim of \$200.

I do not award the landlord recovery of their filing fee of \$100. The tenants previously agreed to the deduction of \$200 on the Report and I have dismissed the balance of the landlord's monetary claim.

Using the offsetting provisions contained in section 72 (2)(b) of the Act, I order the landlord to deduct \$200 from the tenants' security deposit of \$1,050, in full satisfaction of their monetary claim.

Pursuant to section 62(3) of the Act, I order the landlord to return the balance of the tenants' security deposit of \$1,050, or \$850, and the tenants' pet damage deposit of \$1,050, in full, 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 \$1,900.

Should the landlord fail to voluntarily comply with these orders, the landlord must be served with this order as soon as possible to be enforceable. Should the landlord still fail to comply, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord has been ordered to deduct \$200 from the tenants' security deposit of \$1,050 in full satisfaction of their monetary claim for light fixture damage.

The landlord has been ordered to return the balance of the tenants' security deposit and the full amount of the tenants' pet damage deposit, immediately.

The tenants have been granted a monetary order in the amount of \$1,900 in the event the landlord fails to comply with the orders.

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: October 21, 2022

Residential Tenancy Branch