



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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 to use against a monetary award, and recovery of the cost of the filing fee.

The landlord and the tenants 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.

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 parties confirmed receipt of the other's evidence.

I have reviewed all oral and written 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 here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

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

Is the landlord entitled to recovery of the cost of the filing fee?

Background and Evidence

The evidence at the hearing was the tenancy began on September 1, 2019, and ended on June 28, 2022, when the tenants vacated the rental unit. Monthly rent was \$1600, and the tenants paid a security deposit of \$800, which the landlord continues to hold for purposes of this claim. The tenants lived in the upper floor and the landlord lived in the lower level of the residential property.

The landlord's monetary claim is as follows: \$350 for mould removal (estimated), \$382.19 for emergency services, \$250 for a floor disposal, and \$1675.41 for floor replacement.

In their application, the landlord wrote the following:

Tenant vacated property morning of June 28. Water supply was not turned off fully when tenant laundry suite removed. Both hot and cold taps leaked until water entered landlord's home office the following morning, via ceiling. When condition inspection conducted that evening, June 29, all windows had mould growth, tub/shower had mould growth, walls and window coverings were damaged, outdoor area rug had accumulated surface debris and staining.

Mould removal –

The landlord said the work was not undertaken as of yet and they could not find anyone for such a small job. The parties did have a move-in inspection.

The landlord said that no tenants have moved in since the tenants vacated due to the renovations, and the damages have taken a back seat to the renovations.

The tenant submitted that they diligently cleaned the windows prior to vacating. During the tenancy, there was a ventilation issue, even when cooking. Tenant KR thoroughly

cleaned the rental unit every week. When they moved out, they saw some mould in the tight crevices in the windows, which was hard to clean.

The tenant said that the landlord's statement that there was a move-in inspection was a lie and the first time they saw a condition inspection report was in the landlord's evidence.

Emergency services –

The landlord said that they work at home and heard a tapping noise from their desk. Upon an investigation, the landlord saw pooling water. For this reason, they called hazmat services. The landlord noticed the water from upstairs, which was traveling quite heavily into the lower unit. The landlord said they did everything to mitigate their loss and they were fortunate the damaged part was in the section undergoing renovations.

The tenant submitted that they have been a millwright for 30 years and they know how to turn off a tap. They ensured the tap was fully turned off. There was nothing in the move-out inspection report that showed any water leaking.

In response, the landlord she has had experience with the plumbing where the taps appear turned off, but pressure builds up in the pipes causing the tap to open.

The tenant said they were struggling to understand why a hazmat company needed to be called when it was just a plumbing issue.

Floor disposal –

The landlord submitted that the flooring was damaged due to the leaks, and they were tearing out 2 layers of floors, the original and a heavy vinyl. The landlord said they paid someone cash for the work, and did not get a receipt.

Floor replacement –

The landlord said that they have not replaced the floors due to the renovations as they have their furniture in that room.

The landlord's relevant evidence included, but is not limited to, a condition inspection report, video of the leak, an invoice and estimates, and photos of areas claimed for in the rental unit.

The tenants' relevant evidence included, but is not limited to, videos of the condition of the rental unit at the end of the tenancy and a written statement in defence of the landlord's 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.

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, I find the evidence is that the landlord did not conduct a move-in inspection. There were no signatures from either party on the report or a list of the condition of the rental unit at move-in.

Mould removal –

As to the landlord's claim for mould removal, the landlord confirmed they have not paid for this service and therefore, no loss has been incurred. Additionally, I have reviewed the landlord's up-close photos of the areas relating to this claim. The mould was located in the corners of the items, and I find the location would be difficult to access. The rest of the photos shows the tenants did clean the windows and bathtub.

The landlord did not submit long-range photos which would show whether the tenants left the rental unit overall reasonably clean. Further, from my viewing of the up-close photos, I find the tenants left the rental unit reasonably clean.

As I find the landlord submitted insufficient evidence that they suffered a loss or that the tenants did not leave the rental unit reasonably clean, I **dismiss** the landlord's claim of \$350, **without leave to reapply**.

Emergency services, floor disposal, floor replacement –

The claims relate to the landlord's assertion that the tenants failed to turn off the tap connections to the laundry appliance. I therefore considered these claims as a whole.

The landlord said that the tenants did not properly turn off the tap and the tenants said they did and had experience in the proper way to turn off the tap. Apart from this, the water leaking was not noted during the move-out inspection, and instead, the landlord indicated they noticed a tapping noise the next day.

The landlord, more importantly, said they experienced this situation before where pressure builds in the pipes, which causes the taps, which look closed, to not be closed.

For these reasons, I find the landlord submitted insufficient evidence to show negligence by the tenants, as I find it just as likely as not, built-up pressure caused the taps to open and leak. I therefore find the landlord submitted insufficient evidence to support this claim. This is apart from the fact that the landlord has not incurred a loss for floor removal or replacement, which is a component of the landlord's burden of proof.

The invoice from emergency services also fails, as I find the landlord submitted insufficient evidence of the tenants' deliberate or negligent actions.

For these reasons, I **dismiss** the landlord's claim for emergency services, floor disposal, and floor removal, **without leave to reapply**.

As a result, I **dismiss** the landlord's application, **without leave to reapply**.

As I have dismissed the landlord's monetary claim against the tenants, pursuant to section 62(3) of the Act, I order the landlord to return the tenants' security deposit of \$800, immediately.

As of this date, the tenants' security deposit of \$800 has accumulated interest of \$5.81.

To give effect to this order, I issue the tenants a monetary order (Order) pursuant to section 67 of the Act for the amount **\$805.81**.

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

Conclusion

The landlord's monetary claim is dismissed, without leave to reapply, due to insufficient evidence.

The tenants have been issued a monetary order in the amount of \$805.81, which is the amount of the tenants' security deposit that I ordered returned, plus interest.

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: May 16, 2023

Residential Tenancy Branch