



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MND-S, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution (application) under the Residential Tenancy Act (Act) for compensation for alleged damage to the rental unit by the tenants, compensation for a monetary loss or other money owed, authority to keep the tenants' security deposit to use against a monetary award and recovery of the cost of the filing fee.

The landlord, the landlord's representative, 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. The tenants confirmed receipt of the landlord's application. Neither party raised an issue with respect to the other's evidence.

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 (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically 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 and recovery of the cost of the filing fee?

Background and Evidence

I heard evidence that the tenancy began on December 1, 2021 and ended on April 30, 2022. Monthly rent was \$7500 and the tenants paid a security deposit and pet damage deposit (collectively, the “deposits”) of \$3750 each.

A previous dispute resolution Decision of February 28, 2023 was made by another arbitrator, in which the arbitrator found the landlord previously returned \$4800 to the tenants from the deposits. The balance of the deposits is being held by the landlord.

The rental unit was a furnished home. The evidence showed that the home had been previously used as an Airbnb.

The landlord’s monetary claim in their application was \$2,313.86 for alleged damage to the rental unit by the tenants and \$1631 for the equivalent of 1 week’s rent. At the hearing, the landlord said their claim is now just for damages, and not the 1 week’s rent.

The landlord’s breakdown of their claim is the following: Cleaning-\$300; cleaners-\$924; handyman repairs-\$284; bedding-\$393.07; lighting-\$68.64; laundry-\$52; lawn care and garbage removal-\$89; miscellaneous-\$223.15.

In support of their claim, the landlord testified to the following:

There was essentially a move-in inspection with an agent of the landlord, but the landlord has lost access to their original documents, so the original move-in condition inspection report (Report) was not submitted.

There was an inventory list included for the contents of the rental unit, but that was in an email that the landlord cannot access.

As to the move-out inspection, the tenants were offered 2 opportunities on April 30 and May 4, 2022, and the tenants did not attend. The inspection was with another landlord’s agent. Although the landlord did not attend as they live away from the rental unit, they were prepared to attend the walk-through by Facetime.

As to the cleaning, the landlord submitted that they were not present to clean, but had a friend clean the rental unit and paid them in cash. There was no receipt.

As to the cleaners, this charge is for carpets and upholstery, because of the urine stains. The addendum to the tenancy agreement shows the tenants were responsible for carpet and upholstery cleaning.

As to the handyman claim, small repairs were done after the tenancy ended. A receipt was provided.

As to the bedding, as the rental unit, a single home, was furnished, they are claiming for bedding replacement due to the damage.

As to the lighting, the claim is for light bulb replacements.

As to the laundry charge, the tenants left items in the washer and the claim is for \$26.50 each for 2 trips to the laundry.

As to the lawn care, the tenants left a game table outside the rental unit and that, along with other garbage had to be removed.

As to the miscellaneous charges, these were for various items that were needed.

The landlord's relevant evidence included photos of certain areas of the rental unit at the end of the tenancy and receipts.

Tenants' response –

The tenants' provided a comprehensive written response, which corresponded to their testimony, reproduced as written, in part, as follows:

The landlord stated we were not available for a move out inspection, this is false, we have texts back and forth stating when to meet and we were assured that everything was fine and no need for inspection.

1. Picture of air table: This was not a belonging to the dallas road property and was left for a free item to be picked up.
2. 2.1 \$916.80 purchases to replace items: There was no initial inventory taken from prior tenants. There was no written inventory or mention of inventory on walk through. The damage to the chair, pans, garbage, sink faucet etc. was done prior to move in.

2.2 \$280.00 contractor: The contractor was necessary to have the rental ready for the next tenants. This should have been done prior to us moving in. The damage needed to be fixed was existing and we should not be held responsible to pay for the week lost rent and delay of the new tenants. This work should have been done by the contractor at the owner's expense, this was work needed, yet we lived with it and paid full price rent (7500.00), despite the need for repairs, including a broken oven, bathroom and living room ceilings needing repairs.

2.3 \$300.00 ☐ cleaning: We left the place very clean as stated by text from landlord. I would like a breakdown for 15 hours of cleaning. Upon move in, we removed garbages, did dishes found under sink, laundry and made beds, no compensation was given to us.

2.4 \$925.00 carpet cleaning: Mostly wood floors. I own a carpet cleaner and did a thorough clean of all furniture/carpets that were in the property prior to move out. Similar cleaning quotes found were less than half of stated bill. This bill is far above market value, should it have been necessary to begin with.

1. Bathroom door: existing problem that landlord was aware of and was supposed to fix during our tenancy.
2. Chair assembly: broken upon arrival from previous tenants.
3. garbage / recycle: we had removed garbage/ recycle upon move in. No compensation. What garbage was left? (INCLUDE TEXT PICTURE)
4. Pot lights: unaware of lighting issues, was never told. Did not take any inventory of working bulbs, ever. Unaware of policy for lightbulbs and renting.
5. Heavy door hinge: existing damage. Do not think it is fair to pay for existing damage.

Upon move in, beds were not made and inventory was not taken from prior tenants that had parties and were exchange students. No move out report from them. Bought majority of own bedding and stored existing bedding in tupperware until move out.

There was a stain by us on the duvet of the main bedroom, that we reported and offered to pay for. The remaining claims are false. No extra sheets were provided

Lawn care: regular lawn care had been done by tenants despite not being a contractual duty of the tenancy. We moved the lawn mower 3 days prior to move out.

Garbage: city pick up, also tenants had taken care of prior garbage. Removal of "free item" not necessary as we would have picked it up if it had not been gifted to someone.

In addition, the tenants said they only received copies of black and white photographs from the landlord for evidence.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

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. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

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.

In evaluating the landlord's claim, firstly, I place no evidentiary weight on the condition inspection report to support the claim. The Act requires that a landlord and tenant together inspect the rental unit at the end of the tenancy.

The Report filed was unsigned by anyone and it appears to have been created after the fact, as the colour and size of the fonts are the same, with no comments included. I do not find this is a true Report and apart from that, neither of the 2 agents the landlord said attended the move-in and move-out inspection were present to provide firsthand testimony. Additionally, I find the landlord submitted insufficient evidence to support

that the tenants were provided two inspection opportunities. The tenants' evidence is that the landlord failed to attend at the agreed upon time for the first inspection.

I also find the landlord provided no firsthand accounting of the state of the rental unit either before or after the tenancy, as they were not present at either time.

While the landlord provided some photos allegedly showing damage by the tenants, I do not find a corresponding photograph for each of the items from the beginning of the tenancy. The landlord failed to provide any photographs showing the overall state of the property in order to determine whether the entire rental unit was left reasonably clean.

In one instance, the landlord submitted a photograph of a small section of a rug, which appeared to be taken a few inches from the rug showing a few short pet hairs. I find this was unreasonable to support a claim that the rental unit was left unreasonably clean.

Further to my finding, the landlord failed to submit a copy of the inventory list in order to compare the item or state of the item at the end of the tenancy. Apart from that, the undisputed evidence was that the residential property was previously used as an Airbnb, which I find would show that the furnishings were not new at the beginning of the tenancy. The landlord submitted insufficient evidence on the age or condition of each item in the furnished home.

Further, I find the tenants submitted undisputed evidence that the landlord did not serve them with the same evidence as filed with the RTB, which were coloured photographs. The Rules require that the other party receive the same evidence filed with the RTB.

As to the light bulb replacement claim, Policy Guideline 1 states that a landlord is responsible for, among other things, replacing light bulbs in hallways and other common areas; the tenant is responsible for replacing light bulbs during their tenancy.

I interpret this Guideline to provide that a landlord is not responsible to replace lights bulbs during the tenancy if a tenant asks, so long as they were working at the time of move-in. I find it is the tenant's choice to replace light bulbs during the tenancy.

Further, I find it reasonable to determine that light bulbs that are burnt out at the end of the tenancy to be reasonable wear and tear.

I dismiss the landlord's claim for light bulb replacement costs.

For all these reasons, I find the landlord submitted insufficient evidence to support any of their monetary claims. I therefore **dismiss** the landlord's application, **without leave to reapply**.

As the tenants agreed that the duvet cover was stained, I find it reasonable to grant the landlord a nominal award of \$25.

The previous Decision stated that the landlord returned \$4800 to the tenants on April 30, 2022, which I interpret to mean the interest accumulated on the balance of the tenants' security deposit began on that date. Accumulated interest on \$2700 through the date of the Decision is \$19.78. The total remaining security deposit and interest is \$2719.78.

I direct the landlord to deduct the amount of her monetary award of \$25 from the tenants' security deposit and interest of \$2719.78, and order the landlord to return the amount remaining, or **\$2,694.78**.

To give effect to this order, I grant the tenants a monetary order (Order) pursuant to section 67 of the Act for the amount of **\$2,694.78**.

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.

I note that I did not double the remaining security deposit as the landlord was instructed to file their application within 15 days of the previous Decision dated February 28, 2023. The landlord's application was filed January 11, 2023.

Conclusion

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

The landlord is ordered to return the remaining portion of the tenants' security deposit of \$2,694.78, immediately, and the tenants are granted a monetary order in that amount, 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: May 17, 2023

Residential Tenancy Branch