



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlord: MND-S, MNDC-S, FFL
For the tenant: MNSDB-DR, FFT

Introduction

This hearing was convened as a result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlord applied 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 and pet damage deposit to use against a monetary award; and
- recovery of the filing fee.

The tenants applied for:

- a return of their security deposit and pet damage deposit; and
- recovery of the filing fee.

The landlord's agent (HL), the tenants and the tenants' advocate (JD) attended the telephone conference call hearing and were affirmed.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Neither party presented an issue with respect to receiving the other's application or evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me, and respond to the other's evidence.

I have reviewed the oral, written, and digital evidence of the parties before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, I used my discretion to determine what evidence was relevant in these matters. 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 tenant and to recover the cost of the filing fee?

Are the tenants entitled to a return of their security deposit and pet damage deposit and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2021, and ended on August 31, 2022. The monthly rent was \$3,900 and the tenants paid a security deposit and pet damage deposit of \$1950 each.

The landlord retains the tenants' security deposit and pet damage deposit (collectively, deposits).

The landlords' monetary claim listed in their application was \$866.25, plus the filing fee. The landlord claims \$551.25 for cleaning and \$315 for repairs.

HL's submissions and testimony for the landlord –

In testimony, HL stated they did not believe the landlord conducted a move-in inspection. HL stated the move-out inspection was not completed as the tenant knocked HL's phone from their hand and HL called the police. According to HL, the police told them to go back out and do not come back in until the tenant had moved all their "stuff". The new tenants moved in and complained about the cleaning, so the landlord hired a professional cleaner to satisfy the new tenants. The cleaning was at the new tenants' request. The rental unit was new at the beginning of the tenancy. In response to my inquiry, HL confirmed that they expected the tenants to have the rental unit in a move-in ready condition, due to the clause in the addendum to the tenancy agreement, which required the tenants to have the rental unit professionally cleaned.

In response to my inquiry about the invoice for repairs, HL said this was done by the landlord's handyman.

HL referred to the landlord's evidence, which included photographs of the rental unit. Additional evidence included a handyman quote, handyman receipt, a condition inspection report (Report), and the written tenancy agreement, with addendum.

Tenants' response –

The tenant, PB, and their advocate provided the responses to the landlord's application. PB stated that they received a call on August 31, 2022 to do the final inspection, that the inspection with HL started in the basement level, continued to the main level, and then continued to the upper level.

The inspection was not completed as HL's phone fell to the floor, they picked up the phone and heated words were exchanged when HL said there was damage and PB said the areas were from wear and tear, resulting in HL calling the police. HL became very rude, according to PB.

As to the claim for repairs, the tenant said that although the home was in a new building, the landlord had already lived there, as her furniture was in the rental unit before they moved in.

The tenants had the rental unit professionally cleaned, and read from their receipt, but the receipt was not before me at the hearing. The total cost for the cleaning was \$600 plus GST.

The tenants submitted that the landlord said at the beginning of the tenancy that there were paint chips on the walls because the developer did not finish the job. The tenants were allowed to paint the walls, if they chose, according to the tenant.

The tenants submitted that the deductions noted on the move-out Report were added after the inspection. The tenants disagreed with the Report as there had never been any mention of issues during the tenancy and were not given the opportunity to address any issues during the inspection, like wiping up a hair. The tenants said there was no proof when the photographs were taken.

The tenant pointed out that the handyman receipt was dated in February 2023.

Tenants' application -

On their application, the tenants wrote as follows:

We are requesting our deposit because there was no damages when we left. Landlord didn't inform us of any damages or voice any concerns.

On their evidence submission on their application, the tenants wrote as follows:

we left the unit in a professionally cleaned state only minor wear and tear no damage was present or reported. we were told we would receive our deposit by our landlord.

The tenants' monetary claim is \$3,900 for their deposits and the filing fee of \$100, or \$4,000.

The tenants submitted documentary evidence showing their written forwarding address was provided to the landlord in letter form, sent by registered mail and was delivered on September 12, 2022. The landlord has not returned any portion of the deposits, even though the landlord's claim was less than the security deposit and the landlord did not provide evidence that there was any damage from their pet.

Analysis

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

Landlord's application –

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.

The claiming party, the landlord in this case, has the burden of proof to substantiate their claim on a balance of probabilities.

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.

Under the Act, tenants are required to leave the rental unit reasonably clean when they vacate. The tenants are responsible for paying cleaning costs where the property is left at the end of the tenancy that does not comply with the Act. Tenants are not responsible for cleaning the rental unit to bring the premises to a higher standard.

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.

I find landlord breached the Act as there was no move-in inspection or move-in Report. I find this breach caused the landlord to be unable to prove the state of the rental unit at the beginning of the tenancy as there was no record of the condition of the rental unit. I do not accept that the tenants were the first persons to occupy the rental unit as the tenants gave undisputed evidence the landlord's furniture was in the rental unit previously.

As to the landlord's claim for cleaning, I have reviewed the landlord's photographs and find that the tenants left the rental unit at least in a reasonably clean condition. I do not find that photos taken at very close range are sufficient to prove the overall state of the rental unit to determine if the rental unit was left unclean. Some photos were taken at such close range I was not able to see what might have been an issue. As an example, in one photo, I find the interior of the refrigerator was extremely clean when viewing the entire appliance, and a close up picture showed a few crumbs.

As to the landlord's claim for damage, for the same reasons, I find the landlord's claim is unsupported by the lack of proof of the state of the rental unit at the beginning of the tenancy. From my review of the photographs, I find the areas of concern were either minor or unclear what the photo depicted. I find some minor scratches were reasonable wear and tear, if even that.

The landlord is informed that their addendum in the tenancy requiring the tenants to professionally clean the rental unit to bring to a state that is move-in ready for the next tenants is not enforceable under the Act. Landlords and tenants may not contract outside the Act.

Apart from that, I do not find the landlord's evidence is credible.

The cleaning receipt of \$551.25 was from a Trading and Storage company, whose address was not listed on the invoice. The cleaning invoice also listed carpet cleaning/shampooing, garbage removal, cleaning services and other services. Although only the cleaning cost listed an amount, there were no amounts on the other 3 items. I find this document unclear. There was no garbage shown on any of photographs. The agent stated they only hired a cleaner because the new tenants requested it. I find this supports that the landlord believed the rental unit was at least move-in ready for the next tenants.

I have reviewed the quote for damage repair and the invoice for damage repair. Both documents were on generic invoice forms, with no identifying company listed. The name signed at the bottom of the February 6, 2023 invoice has the same surname of the agent, although the agent identified himself as an agent for the landlord at the beginning of the hearing, and described the person providing the quote and invoice were from the landlord's handyman.

I find the same person, presumably the agent here, provided not only the quote for repairs, but also the receipt for repairs. The handwriting on the quote and invoice I find is the same handwriting as on the move-out Report. In particular, the rental unit address is distinctive and written on all three documents, having the same distinctive characteristics.

For the above reasons, I find the landlord submitted insufficient evidence to support any part of their claim, and the application, including the request for the filing fee, is **dismissed, without leave to reapply.**

Tenants' application-

Under section 38(1) of the Act, within 15 days **of the later** of receiving the tenant's forwarding address in writing and the end of the tenancy, a landlord must either return a tenant's security deposit and pet damage deposit or file an application for dispute resolution claiming against the deposits. Section 38(6) of the Act states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit and pet damage deposit.

In the case before me, I find the evidence was that the tenants written forwarding address was given to the landlord on September 12, 2022 and the landlord's application was made on September 14, 2022.

Additionally, when a landlord fails to do a move-in inspection with the tenants, as is the case here, the landlord's right to make a claim against the security deposit and pet damage deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

Although the landlord's right to claim against the security deposit and pet damage deposit for damage to the rental unit was extinguished, the landlord's application also included a claim for cleaning, which I find are not damages.

Residential Tenancy Branch Policy Guideline 17 suggests that the landlord may make a claim against the security deposit for any other monies owing other than for damage to the rental unit, even in the light of sections 24 and 36 of the Act.

As part of the landlord's claim was not for damage to the property but for cleaning, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposits within 15 days of the end of the tenancy.

As I have dismissed the landlord's application without leave to reapply, I order the landlord to return the tenants' security deposit of \$1950 and pet damage deposit of \$1950 immediately.

To date, the tenants' security deposit and pet damage deposit have accumulated interest in the amount of \$16.38 each.

To give effect to my order, I grant the tenants a monetary order in the amount of **\$4,032.96**. This amount is the tenants' security deposit of \$1950, plus interest of \$16.48, the tenants' pet damage deposit \$1950, plus interest of \$16.48, and the filing fee of \$100, which I have granted them due to their successful application.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

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

The tenants' application is successful, and they have been granted a monetary order as noted above.

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 07, 2023

Residential Tenancy Branch