



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For monetary compensation for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The landlord confirmed they received the tenant's evidence. The tenants stated they did not receive any evidence, except a statement from the landlord. The landlord stated it was served on the tenants.

At the hearing, I described to the tenants the landlord's evidence, which only consisted of approximately 17 photographs. No other evidence was submitted such as receipts. The tenants were prepared to proceed with the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to the return of their security deposit?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2022. Rent in the amount of \$3,300.00 was payable on the first of each month. The tenants paid a security deposit of \$1,650.00. The parties disagreed on when the tenancy ended. The tenant stated September 24, 2022 and the landlord stated September 29, 2022.

The tenant stated that on September 13, 2022, they gave the landlord a 10 Day Notice to end the tenancy on September 24, 2022, earlier than October 31, 2022, that was in the notice to end tenancy given for landlord's use of property.

The landlord testified they never received any 10 Day Notice, the landlord stated that they only knew the tenants were vacating when a moving truck showed up on September 29, 2022. The landlord stated any document can be provided after the fact.

Landlord's Application

The parties agreed a move-in and move-out condition inspection report was not completed.

The landlord claims as follows:

a.	Curtains	\$ 200.00
b.	Repair curtain rod holes	\$ 100.00
c.	Electrical box inspection	\$ 600.00
d.	3 Cedar Trees and 2 Bushes	\$ 600.00
e.	Replace bent pole on fence	\$ 300.00
f.	Sensor light wire replacement	\$ 75.00
g.	Repair damage wall	\$ 25.00
h.	House keys not returned	\$ 275.00
i.	Cost to move firewood and pool table	\$ 250.00
j.	Missing pool table balls	\$ 75.00
k.	Filing fee	\$ 100.00
	Total claimed	\$2,450.00

Curtains

The landlord testified that the tenants had removed the curtains and they found them in the garbage, and they were dirty, stained and one was ripped. The landlord stated that they purchased fabric and made new curtains. No receipt was provided.

The tenants testified that at the beginning of the tenancy they removed the landlord's curtains and placed them in a box because they were stained. The tenants stated that they used their own curtains by hanging them on the landlord's curtain rods.

Repair curtain rod holes

The landlord testified that they had to repairs holes where curtain rod was removed.

The tenants testified that they never installed curtain rods. The tenants stated that any holes had to be previously there and, in any event, would not be considered damaged because they are entitled to hang pictures and even curtain rods. This is normal wear and tear.

Electrical box inspection

The landlord testified that the tenants had installed an electrical plug in the garage, and they had to have the electric box inspected and the plug removed. No receipts or copy of the electrical inspection were provided.

The tenants testified that the landlord knew that they were going to install an electrical plug for their vehicle as this was discussed even before they moved in. The tenants stated that they had a licensed electrician install the plug and this was an improvement to the property.

3 Cedar Trees and 2 Bushes

The landlord testified that they had to go away for six weeks, and the tenant agreed to water the cedar trees and bushes; however, they did not water them, and they all died. The landlord stated they did not provide pictures of the trees, just picture after they were cut down. Filed in evidence are photographs of stumps.

The tenants testified that the yard maintenance was the landlord's responsibility. The tenants stated they did not agree to be responsible for the landlord's trees. The tenants stated that the only thing they agreed to was to add water to the fishpond because it was leaking. The tenants stated that the landlord's wife was at the property regularly.

The female landlord responded that they were at the property twice during the six week period and never went into the backyard where the trees were located.

Replace bent pole on fence

The landlord testified that the tenant must have backed into the metal fence that surrounds the fishpond as it has a bent pole. The landlord stated they have not replaced the bent pole. Filed in evidence is a picture of the fence.

The tenants testified they did not cause any damage to the fence post.

Sensor light wire replacement

The landlord testified that the tenant must have cut the wires to the sensor light that was down the driveway.

The tenants testified they have no idea what the landlord is talking about. They did not cut any wires on the sensor light.

Repair damage wall

The landlord stated that they had to repair wall damage for two picture holes. Filed in evidence is a photograph. No receipt was provided.

The tenants deny they caused any damage. The tenants stated they are entitled to hang items on the walls.

House keys not returned

The landlord testified that the tenants did not return the keys and they had to replace three locks. No receipt was provided.

The tenants testified that they were only provided one key at the start of the tenancy, and it was left in the mailbox.

Cost to move firewood and pool table

The landlord testified that the tenants were was given the option that they would leave their pool table in the rental unit, or they would have had the 2000lb pool table removed at the beginning of the tenancy. The landlord testified that the pool table was not removed from the rental unit; however, the tenants did not have their permission to move it from its allocated spot.

The landlord testified that the tenants also removed the wood from the shed that is attached to the house to the woodshed that is on another area of the property, without their consent. The landlord stated they had to pay to have the items returned to their original spots. No receipt was provided.

The tenants testified that they did move the pool table to another area within the rental unit; however, they were entitled to make the rental unit suitable for their needs.

The tenants testified that they did remove the firewood from the storage shed to the woodshed because they wanted to use the shed to store their bikes. The tenants stated that they did not take the wood and they were entitled to use the shed for their own purposes as that was included in their rent. The tenants stated the tenancy agreement did not state that the wood or pool table could not be moved.

Missing pool table balls

The landlord testified that two pool table balls were missing. The landlord stated that they have not replaced the missing balls as they use the other set.

The tenants testified that the pool table balls were not counted at the start of the tenancy. The tenant stated that the one set the landlord is referring to, was stored in the box with the curtains.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, 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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal 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.

Curtains

The landlord evidence of the landlord was that the tenants had removed the curtains and they found them in garbage, and they were stained, dirty and one curtain was

ripped. The evidence of the tenants was they removed the landlord's curtains and placed them in a box because they were already stained and used their own curtains. Even if I accept the landlord's evidence, I have no proof of the conditions of the curtains when the tenants moved into the rental unit, and I have no proof they suffered a loss as no receipt was provided. Therefore, I dismiss this portion of the landlord's claim.

Repair curtain rod holes

The photographs provided by the landlord do not support the tenants cause damage to any walls as these are minor holes and even if cause by the tenants would be considered reasonable wear and tear. Therefore, I dismiss this portion of the landlord's claim.

Electrical box inspection

I accept the tenants installed an electrical outlet for their vehicle. I find it highly unlikely that this matter was not discussed between the parties before the tenants moved into the premises as it would be obvious, they would need an electrical source for their electric vehicle. Further, even if it had not been discussed the landlord could have asked the tenants to show it was done by a certified electrician. The evidence of the landlord was they had to have the electrical panel inspected; however, I have no proof that was done or proof of payment. Therefore, I dismiss this portion of the landlord's claim.

3 Cedar Trees and 2 Bushes

In this case, I am not satisfied that the tenants agreed to water the cedar trees or shrubs while the male landlord was away for six weeks. Further, the pictures of the trees were taken after they were cut down. The trees could have been stressed and died for other factors. Further, I have no proof of the value of the loss. Therefore, I dismiss this portion of the landlord's claim.

Replace bent pole on fence

The evidence of the landlord was the tenants must have backed up hitting the fence and bending the post. The tenants denied this. I find without any evidence of the condition of the fence post at the start of the tenancy that the landlord has not met the burden of proof. The photographs provided by the landlord does not show any significant damage nor has the fence post be replaced. Therefore, I dismiss this portion of the landlord's claim.

Sensor light wire replacement

The evidence of the landlord was the tenants must have cut the wire to the sensor light. I have no evidence before me that would lead me to believe this is true. No photographs were provided and no proof that a new one was purchased. Therefore, I dismiss this portion of the landlord's claim.

Repair damage wall

The photographs provided by the landlord do not support the tenants cause damage to any walls as these are minor holes and even if cause by the tenants would be considered reasonable wear and tear. Therefore, I dismiss this portion of the landlord's claim.

House keys not returned

Both parties provided a different version of events; however, the landlord has the burden of proof. Even, if the tenants did not return the keys, the landlord has not provided any evidence that they changed the locks. No proof of loss was provided, such as a receipt. Therefore, I dismiss this portion of the landlord's claim.

Cost to move firewood and pool table

In this case, the firewood and the pool table were the property of the landlord. However, the tenant was paying to rent the premises. I find if the landlord did not want the pool table moved to a different location within the rental unit or to have the wood moved to another appropriate spot, they should have ensured that this was a term within their tenancy agreement. Therefore, I dismiss this portion of the landlord's claim.

Missing pool table balls

The landlord has failed to prove how many pool table balls were given to the tenants at the start of the tenancy. I find it would make no sense for the tenants to steal two balls. Further, the landlord has not proven a loss. Therefore, I dismiss this portion of the landlord's claim.

As the landlord claim has been dismissed in full. I find the landlord is not entitled to recover the cost of the filing fee.

As I have dismissed the landlord's application, I find the tenants are entitled to the total amount they requested in their application for the return of their security deposit of \$1,650.00, interest of \$18.09 and the \$100.00 they paid to fill their application. I grant the tenants a formal order in the amount of **\$1,768.09** under section 67 of the Act.

This order may be filed in the Provincial Court (Small Claims) 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's application is dismissed. The tenants' application is granted. The tenants are granted a monetary order as stated 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*.

Dated: July 24, 2023

Residential Tenancy Branch