



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven the Tenant breached the *Residential Tenancy Act*, regulation and/or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed he entered into a verbal tenancy agreement with the Tenant that began in July 2010 and ended at the end of February 2011. Rent was payable on the first of each month in the amount of \$1,200.00. The parties attended Dispute Resolution December 8, 2011 which resulted in an Order issued for the return of the Tenant's security deposit. No move in or move out condition inspection report forms were completed. The Landlord stated he has owned this house for approximately 30 years and has rented out the upper floor for about 25 years while he has lived in a separate suite downstairs.

The Landlord advised he is seeking monetary compensation of \$1,300.00 for damages that were caused to the rental unit which include costs to replace the broken toilet, re-cleaning of carpet, repainting of the upstairs bedroom and the entire upstairs unit and for cuts that were done to his vinyl deck. He stated he did not know the exact amounts it cost him for these repairs but it certain they were more than the \$1,300.00 he is claiming.

The Tenant's agent stated that they acknowledge that they had gotten blue paint on the bedroom ceiling when they painted the walls so they are in agreement to pay for the paint to repaint the ceiling white. Also, they confirm they forgot to clean the dishwasher prior to moving out and would agree to pay for that to be cleaned. She stated they deny responsibility for the rest of the Landlord's claims which they believe are normal wear and tear. They did not put that many holes in the walls and they did not cause unreasonable damage to the Landlord's deck. As for the toilet she stated that it broke in early January and that they turned off the water supply as soon as it happened to limited any water damage. This toilet was over twenty years old so they should not be responsible to have that repaired because the tank fell off.

The Landlord stated he did not know the exact age of the vinyl deck but thinks it was installed about 15 years ago and he confirmed the toilet was around twenty years old. He argued that there were more than a few spots of blue paint on the ceiling and noted that his photographs provided a closer view of the damages caused by the Tenants. He states he did not provide copies of the receipts for work performed because he destroyed most of them after giving some to the Tenant.

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a written statement from the Landlord, 21 photos from the Landlord, 25 photos from the Tenant, and a copy of the December 8, 2011 dispute resolution decision.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and

3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Part 3 Section 21 of the *Regulation* stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

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. In this case, the Landlord has the burden to prove the condition of the rental unit from the beginning of the tenancy and that damages occurred **during** the course of the tenancy. Accordingly, the only evidence before me as to the condition of the rental unit at the beginning of the tenancy was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof.

As per the aforementioned I find there to be insufficient evidence to prove the test for damage or loss, as listed above, and I hereby dismiss the Landlord's claim for damages except for those damages which the Tenant accepts responsibility for.

The Tenant's Agent stated they accept responsibility for the cost to repaint the bedroom ceiling and to have the dishwasher cleaned. *Residential Tenancy Policy Guideline #16* states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded as an affirmation that there has been an infraction of a legal right. Accordingly, in this case I find that the Landlord is entitled to nominal damages of **\$75.00** which consists of \$60.00 for repainting the bedroom ceiling and \$15.00 for cleaning the dishwasher.

The Landlord has been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$100.00** (\$75.00 + 25.00). This Order is legally binding and must be served upon the Tenant.

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: February 21, 2012.

Residential Tenancy Branch