



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, FF

Introduction

This was an application by the landlord for a monetary order for damage to the rental unit. The application was verbally amended by the landlord in the hearing to exclude the request to retain the security deposit as this was previously determined by a decision of the Director.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged having received the landlord's evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed for damages to the unit?

Background and Evidence

The burden of proof lies with the applicant to prove their claim.

The undisputed relevant testimony in this matter is that the tenancy started March 01, 2006 and ended June 30, 2012. At the start of the tenancy the parties did not conduct a move in inspection. In addition, the parties agree that the tenant is responsible for professional carpet cleaning at the end of the tenancy.

All other testimony is in contrast and in dispute. At the end of the tenancy the landlord claims they performed a move out inspection with the tenant, and the tenant disputes that they participated in an inspection with the landlord, because of a lack of a move out inspection report. I have benefit of a 1 page document – security deposit reconciliation

form (Tenant Security Deposit Refund) - summarizing the landlord's account of the condition of the rental unit on June 28, 2012. The landlord testified the form highlighted the blinds were unclean, walls were damaged by holes, 3 doors damaged by large holes, and the unit was left unclean.

The landlord is claiming that the tenant caused the aforementioned damage to the rental unit. The tenant denied all of the landlord's claims. The landlord provided photographs of the purported damaged doors and the purported unclean state of the rental unit's stove oven and cook top and dishwasher interior; and, provided corresponding invoices and time sheets.

The tenant testified they cleaned the blinds. The tenant testified they did not damage the walls. The tenant testified none of the rental unit doors were damaged when they vacated. The tenant testified the rental unit was cleaned by tenant and the tenant's spouse. In particular, the tenant's spouse reportedly cleaned the stove oven interior.

Analysis

Under the *Act*, the party claiming damage bears the burden of proof. Moreover, the applicant must satisfy each component of the following test:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure or claim is unreasonable, unwarranted or extravagant.

Therefore, in this matter, the landlord bears the burden of proof to establish their claim. The claimant must prove the existence of the damage and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can

verify the actual monetary amount of the loss or damage. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination that the tenant caused the purported damage and their document evidence. The tenant relies on their argument that the landlord is not being truthful, and mostly hearsay testimony, given that they claim not to have inspected the rental unit with the landlord, and that the responsible “cleaner” of certain items in the unit did not provide testimony.

On the face of the evidence, I find the tenant owes the landlord for professional carpet cleaning in the amount of **\$112.00**.

I find the lack of a *move in* Condition Inspection Report (CIR) and the very cursory account and nature of the purported deficiencies at the end of the tenancy (Tenant Security Deposit Refund - form) contribute to a general lack of evidentiary weight in respect of the landlord's claims. The landlord's form referencing, “not clean”, is vague and ambiguous, and despite the forms request for details, woefully lacks sufficient details for all identified deficiencies. I also find the form inadequately substitutes the requirements for a CIR as prescribed by the Residential Tenancy Regulations respecting such reports (www.rto.gov.bc.ca). In such absence, it was available to the landlord to take and provide photographs of the purported unclean blinds, the purported wall damage, and the purported *third* damaged door, but they did not. In the absence of more useful details on the landlord's Tenant Security Deposit Refund form, it was available to the landlord to take photographs and any photographs provided into evidence, on or near the day of the much-disputed condition inspection. Instead, I find the landlord provided photographs of 2 damaged doors (vs 3) which the landlord testified were not taken inside the rental unit – but elsewhere; and, provided all other photographs date-stamped as taken 1 month *after* the much-disputed condition inspection. As a result of all the aforementioned, I find the landlord has not met the test for damages. I find the landlord has not provided, on a balance of probabilities, sufficient credible evidence to support their claims for damage. **I dismiss** the landlord's claim for damage respecting blinds, walls, doors and cleanliness, without leave to reapply. I have granted the landlord compensation for professional carpet cleaning. As the landlord was partially successful in their claim, the landlord may recover the filing fee of \$50.00 for a sum award to the landlord of **\$162.00**.

Conclusion

The landlord's claim, in part has been granted, and the balance has been **dismissed**, without leave to reapply.

I grant the landlord a Monetary Order under Section 67 of the Act for the amount of **\$162.00**. The landlord is at liberty to deduct this amount from any prior amount Ordered payable by the landlord to the tenant. *If necessary*, this Order may also be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: October 19, 2012

Residential Tenancy Branch