



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord filed October 24, 2016 under the *Residential Tenancy Act* (the Act) for a monetary order for damage to the rental unit and to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties agreed to the exchange of evidence, also before this hearing. The parties were provided with opportunity to mutually resolve their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation in the amount claimed for damage?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started May 01, 2014 and ended October 14, 2016. Payable rent was \$975.00 and at the outset of the tenancy the landlord collected a security deposit of \$475.00 which they retain in trust. At the start and end of the tenancy the parties conducted mutual condition inspections with requisite condition inspection reports and provided to the tenant within the required time as prescribed to the Act. At the end of the tenancy the parties did not agree as to the administration of the security deposit.

The landlord claims the tenant caused damage to the rental unit storm door and as a result should compensate the landlord for a replacement door. The landlord claims that

on the morning of the move out inspection the tenant left the storm door *unlatched* and the wind took the door beyond the limit of its connections and the door effectively broke beyond repair requiring replacement. The parties agree that during the damage event there were windy conditions and that such conditions were not unknown to periodically occur in this tenancy.

The parties conversed about their history of communication in the 2 years of the tenancy around measures to avert damage to the storm door, by the tenant adequately securing the door shut so as to safeguard the door from wind damage. The landlord argued they had previously advised the tenant as to the importance of ensuring the storm door was properly latched to the frame of the door utilizing the latching mechanism. The landlord testified they had further advised the tenant to use a key to lock the door as additional safeguard against damage. The parties further discussed the meaning of *latched* / *unlatched* in effort to better understand the nature of the landlord's assertion of the tenant's culpability for the damage.

The tenant did not dispute the door was damaged beyond repair or that the storm door may have been left unlatched from the frame. However, the tenant argued the closing mechanism for the door may not have operated as intended or in adequate condition to sufficiently shut the door and possibly avoid damage during wind conditions. The landlord provided document evidence the storm door was purchased in 2011 but testified it was installed in 2012, was of good quality, and claims it operated as intended but did not go as far as disputing the tenant's assertions in respect to the closing mechanism. The landlord argued that under the windy circumstances the tenant had a responsibility to be more mindful than usual. The tenant submitted that even due diligence may have limitations in the face of certain *Acts of God*.

The parties compared *useful life* charts and guidelines submitted by the tenant, and the parties did agree that, if necessary, the useful life of a storm door for this tenancy could reasonably be deemed to be 10 years.

The landlord submitted evidence in support of their claim for the replacement of the storm door and installation costs as \$620.00.

Analysis

The full text of the Act, and other resources, can be accessed via the Residential Tenancy Branch website: www.gov.bc.ca/landlordtenant.

On balance of probabilities, I find as follows,

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test established by **Section 7** of the *Act* which states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

effectively,

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 mitigating factors as depreciation or wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord 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 the tenant's negligent conduct caused the purported damage. The tenant relies on their argument the landlord did not establish that solely they caused the damage, and that the damage may have occurred due to faulty or inadequate mechanical capacity of the door to adequately shut closed.

On the face of the contrasting evidence, I find the landlord has not satisfied their burden in wholly meeting the test for damage and loss stated above. I find the landlord has not provided sufficient evidence establishing that *solely* the tenant caused the damage to the storm door. None the less, I accept the evidence that the tenant was well-versed in the limits of the storm door's operation and knew or ought to have known that in windy conditions bolstered due diligence would avert damage. As a result, I find it appropriate for the parties to equally share in the total cost of replacing the door as follows.

I prefer the landlord's document evidence establishing the storm door as 5 years old.

Cost of door off-set by the agreed remaining useful life of the door of 5 years
 $(\$410.00 \times .50 = \$205.00) \times .50 = \textbf{\$102.50}$ each party

Cost of installing the replacement door inclusive of tax
 $(\$200.00 \times 1.05 = \$210.00) \times .50 = \textbf{\$105.00}$ each party

As the landlord has been fractionally successful in this application I grant the landlord their filing fee of \$100.00. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Total of replacement for door to landlord (\$102.50 + 105.00)	\$207.50
Filing fee to landlord	\$100.00
Landlord's award	\$307.50
<i>minus security deposit held in trust</i>	<i>-\$475.00</i>
Monetary Order to tenant	(\$167.50)

I Order that the landlord may retain \$307.50 of the security deposit in full satisfaction of the claim and return the balance of \$167.50 to the tenant, forthwith.

I grant the tenant a Monetary Order under Section 67 of the Act for the balance of the security deposit in the amount of **\$167.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application in relevant part is granted.

This Decision is final and binding.

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: May 03, 2017

Residential Tenancy Branch