



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELOWNA RESERVATION CENTER
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNSD, MNDC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The landlords gave the following testimony. ND testified that the tenancy began on October 1, 2016 and ended on April 30, 2017. ND testified that the rent was \$3500.00 per month and that the tenants paid a security deposit of \$1750.00 which the landlord still holds. ND testified that a written condition inspection report was done at move in with the tenants present. ND testified that two attempts to arrange a move out

inspection was offered to the tenants but they chose not to attend. ND testified that the unit was left extremely dirty and required 32.5 hours to clean the unit by a professional cleaner at \$30.00 per hour for a total cleaning bill of \$975.00. ND testified that the tenants damaged an expensive awning on the balcony used to block wind and provide shade. ND testified that the cost to repair the awning was \$1895.00. ND testified that he also seeks \$1400.00 in incidentals such as burnt out light bulbs, missing duvet covers, and damaged shams among other numerous items in the unit. ND testified that the list provided is extensive and some of it may be as a result of wear and tear. BB testified that the unit was left extremely dirty.

The landlord is applying for the following:

1.	Cleaning	\$975.00
2.	Repair Awning	1895.00
3.	Incidentals	1400.00
4.	Filing Fee	100.00
5.	Minus deposit held by landlord	-1750.00
6.		
7.		
8.		
9.		
10.		
	Total	\$2620.00

SK spoke on behalf of both tenants and gave the following testimony. SK testified that the landlord did not conduct a condition inspection report at move in or move out. SK testified that he has never seen a report or was given an opportunity to participate in an inspection. SK testified that the unit was left very clean and that the photos submitted by the landlord are not time or date stamped and were taken during the tenancy without their knowledge. SK testified that he and his roommate never used the outdoor awning except on one occasion and it already had a tear in it. SK testified that the tear was already present and he should not have to pay for it. SK testified that the incidentals claimed by the landlord lack the details such as specific cost and condition to support the claim. SK testified that the landlord has not proven any of the claims.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act,**

the party claiming the damage or loss bears the burden of proof. The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Cleaning – \$975.00

ND testified that a condition inspection report was conducted at move in and two opportunities for a move out inspection were offered to the tenants, however, ND did not provide documentation to support that. When ND was asked, he advised that it was an “oversight” that they were not submitted to the Branch or the tenants. SK questions the validity of the photos submitted by the landlord. SK submits that without a date and time stamp it is impossible to know when the photos were taken. In addition, the tenants submit that the photos clearly show that they were taken while the unit was occupied and not at move out.

The photos submitted by the landlord were not time or date stamped and were of a poor quality. I find the photos to be of a little value and cannot rely on them. The landlord provided a written statement from the cleaner, however the landlord did not make the person available for this hearing to provide testimony and give the tenants an opportunity to cross examine them. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

Awning - \$1895.00

As noted above, the landlord did not provide copies of the condition inspection reports that he alleges were done. The tenants adamantly deny that they caused the rip in the awning. As noted above, the landlord bears the burden of providing sufficient evidence to prove their claim. The landlord has not satisfied all four factors listed under section 67 of the *Act* as required; accordingly, I dismiss this portion of the landlords claim.

Incidentals - \$1400.00

SK submits that the landlord created a word document and just provided an inventory list of the items in the unit. The tenant submits that there is no breakdown of the costs and that the landlord has failed to provide the specifics required to be successful in this claim. I agree with the tenant. The landlord provided a long list of "incidentals" however there was not a breakdown of the cost for each item and did not provide supporting documentation such as receipts. Based on the insufficient evidence before me, I dismiss this portion of the landlords claim.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. The landlord is to return the security deposit to the tenants. I grant the tenants an order under section 67 for the balance due of \$1750.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 03, 2018

Residential Tenancy Branch