



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND-S, FF
 For the tenant: MNSD, FF

Introduction

This hearing was convened as the result of the cross applications (application) of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The landlords applied for the following:

- compensation for alleged damage to the rental unit by the tenant;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the cost of the filing fee.

The tenant applied for the following:

- a return of their security deposit; and
- recovery of the cost of the filing fee.

The landlord and tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are

reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for alleged damage to the rental unit and cleaning, to keep the tenant's security deposit, and recovery of the cost of the filing fee?

Is the tenant entitled to a return of their security deposit and recovery of the cost of the filing fee?

Background and Evidence

This tenancy began on April 1, 2019 and ended on November 20, 2021. The tenant paid a security deposit of \$700.

Landlord's application –

The landlord's monetary claim is \$800, which includes the filing fee of \$100.

In their application, the landlord wrote the following:

Floor is damaged
Washroom window broken
Stove is damaged
Fridge shelves broken
Holes in wall patched but not painted
Kitchen floor damaged
Washroom moldy/smells like smoke

The landlord confirmed that there was not a move-in or move-out condition inspection report (CIR).

In support of their application, the landlord requested to keep the security deposit of \$700 to satisfy their claim, but submitted that will not cover the cost of damage, cleaning and repair.

The landlord submitted they had to throw away the oven.

The landlord confirmed that there was not a move-in or move-out condition inspection report (Report) or receipts for costs incurred.

The landlord's evidence included undated photographs.

Tenant's response –

The tenant submitted that the appliances were old and not in good shape. The tenant submitted that they did not used the stove and that their husband would not let them complain to the landlord about any issues with the rental unit.

The tenant submitted they never heard back from the landlord about their mould issues during the tenancy.

The tenant submitted that they vacated the rental unit on November 20, 2021, and never heard from the landlord about cleaning issues.

The tenant submitted undated photographs of the rental unit.

Tenant's application –

The tenant's claim is \$800, which is their security deposit of \$700 and filing fee of \$100.

The tenant submitted that they cleaned the rental unit before vacating on November 20, 2021. The tenant asserted that there was still 10 days in November 2021 they could come back to clean, but the landlord never contacted them about the rental unit not being clean.

The tenant submitted that they provided the landlord with their written forwarding address in a letter sent by regular mail on December 1, 2021.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Landlord's application –

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

Under sections 23(4) and 35(4) of the Act, a landlord must complete a condition inspection report in accordance with the regulations.

It is important to note that in this case, the landlord confirmed there was not a move-in or move-out condition inspection or report, nor was there proof that there was an inspection of the rental unit with the tenant at the beginning or end of the tenancy, as is the obligation of the landlord pursuant to sections 23 and 35 of the Act.

An inspection report is not only a legal requirement, but also important as it allows both the landlord and the tenant to comment on the condition of the rental unit. Without the move-in or move-out inspection report, where the landlord conducts an inspection with

the tenant to mark any issues with the state of the rental unit, I find I could not assess the condition at the end of the tenancy compared with the beginning of the tenancy.

I find a critical component in establishing a claim for damage or cleaning, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports.

Consequently, I could not determine whether any alleged damage by the tenant was beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenant. I also found that the landlord's photographs taken at the end of the tenancy did not prove the tenant caused damage or left the rental unit unreasonably clean, as there were no corresponding photographs from the beginning of the tenancy.

In some instances, the landlord provided undated photographs of the side of the oven/stove unit that had been pulled away from the cabinets, presumably from the end of the tenancy, but no photographs of the appliance pulled away from the cabinets from the beginning of the tenancy were provided.

Additionally, the landlord confirmed there were no receipts, invoices, or other proof of costs incurred. Therefore, the landlord submitted insufficient evidence to prove they have suffered a loss.

For all the reasons listed above, I find the landlord submitted insufficient evidence to support their burden of proof, and **dismiss** the landlord's application, including their request to recover the filing fee, without leave to reapply.

Tenant's application –

As I have dismissed the landlord's monetary claim against the tenant, pursuant to section 62(3) of the Act, I order the landlord to return the tenant's security deposit of \$700, immediately.

As the tenant's application was successful, I grant the tenant recovery of their filing fee of \$100.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$800, which is their security deposit of \$700 and the filing fee of \$100.

Should the landlord fail to pay the tenant this amount without delay, the monetary order must be served upon the landlords for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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, without leave to reapply, due to insufficient evidence.

The tenant's application is granted as I have ordered the landlord to return the tenant's security deposit of \$700 and granted the tenant recovery of the filing fee of \$100.

The tenant is granted a monetary order in the amount of \$800, in the event the landlord does not comply with this order.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 22, 2022

Residential Tenancy Branch