



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMIT CIRCLE DEVELOPMENT
CORP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND-S, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for alleged damage to the rental unit by the tenants, authority to keep the tenants' security deposit and pet damage deposit to use against a monetary award, and recovery of the cost of the filing fee.

The landlord's agent (landlord) and the tenants 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 accepted documentary evidence submitted prior to the hearing, and make submissions to me. As the tenants did not serve their documentary and photographic evidence to the landlord as required by the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), I have excluded that evidence from consideration.

I have reviewed all oral, written, and other accepted evidence before me that met the requirements of the 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 retain the tenants' security deposit and pet damage deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of January 1, 2021. The monthly rent was \$2,200 and the tenants paid a security deposit and a pet damage deposit ("deposits") of \$1,100 each.

The tenants said they moved out on February 5, 2022 and the landlord said that they received the tenants' forwarding address in a text message on March 22, 2022. The tenants confirmed this statement.

The landlord confirmed keeping the deposits, having filed this claim against them.

The landlord's monetary claim is \$2,400. In the application, the landlord wrote the following:

We are requesting this amount as (tenants' first names) left a multitude of damages that needing repairing. The unit wasn't left in its original condition and we had to hire a cleaner to clean it. We also had to order new blinds for the front windows that were damaged.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord did not provide a specific breakdown of the claims that totalled \$2,400, but did provide a spread sheet with claimed costs that totalled \$2,541.

The claim listed on the spread sheet was \$845, \$855 and \$210, for labour on patio door and associated work, materials for \$375, \$135 for material collection and "mob demob" and tax of \$121.

The landlord testified to the following: The landlord became an agent for the landlord after the tenancy began and if there was a move-in condition inspection report (Report), she did not have a copy. The parties had a strained relationship and as a result, she

did not arrange for a move-out inspection. The photos filed in evidence were taken at various times, a lot of them on January 25, 2022, before the tenants vacated, and some after they vacated. A big issue with the rental unit was the 3rd bedroom, where there was a mushroom grow-op, and which caused a lot of moisture and mold in the rental unit. The police confirmed this. There was a lot of damage to the floor and doors, which included two 4inch long holes to the back door. The tenants were told to take down the room with the mushroom grow-op and they did. There was significant damage to the backyard, including by the door, which had to be repaired. There was damage to the sprinkler head system and there were things buried in the backyard.

Filed evidence included photographs and invoices.

The tenants testified to the following: They did not have an illegal mushroom grow-op as described by the landlord, but the mushrooms were food quality, not illegal mushrooms, and was part of a grant project. There were no mold spores and the mycelium was in petri dishes, with a Hepa filter in that room only and it was the cleanest room in the rental unit. Their son's room was moldy, which caused him to develop respiratory issues. They had been making requests for months and months of the landlord to fix the rental unit as there was a serious amount of mold at the beginning of the tenancy. There was a flood in the rental unit living room caused by the washing machine, but the landlord failed to timely address the issue. When an attempt was made, the plumber stuck a space heater through a cut-out open hole in the ceiling perched on top of a step ladder. The landlord did not bring in humidifiers or fans and their children were getting sick. Another tenant in the residential property took the landlord to arbitration due to the mold in their rental unit and won. Their rental unit had so much mold it was disgusting. The windows were single pane.

The landlord submitted that all the windows in the residential property now have double paned windows.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and

order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

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, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under sections 23 and 35 of the *Act*, a landlord and tenant must inspect the rental unit at the beginning and end of the tenancy and the landlord must complete a condition inspection report in accordance with the regulations.

As to the landlord's claims against the tenants for damage to the rental unit and cleaning, 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. Sections 23, 24, 35, and 36 of the *Act* deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, there was no evidence of a move-in inspection or move-in condition Report and the landlord confirmed there was not a move-out inspection or Report. As such, I find the landlord failed in their obligation under of the *Act* of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenants was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants. I also found that the landlord's photographs were insufficient to prove the state of the rental unit at the end of the tenancy as many of them, according to the landlord, were taken before the tenants moved-out.

Additionally, there were no photographs from the beginning of the tenancy to be able to compare the move-in condition compared to the move-out condition.

In addition, the invoices submitted by the landlord were of little value. The invoices did not match the expenses listed on the spreadsheet, one was on a generic form with no details and others were unspecific as to what work was done. Additionally, several

duplicate invoices were submitted. I find this inconsistent evidence does not support the landlord's claim.

Finally, the landlord was unable to provide the age of any item which may have been replaced.

Taken in totality, I find the landlord submitted insufficient evidence to support their monetary claim against the tenants for compensation. As a result, I dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's monetary claim against the tenants, pursuant to section 62(3) of the Act, I order the landlord to return the tenants' security deposit of \$1,100 and pet damage deposit of \$1,100, immediately.

To give effect to this order, I issue the tenants a monetary order (Order) pursuant to section 67 of the Act for the amount \$2,200.

Should the landlord fail to pay the tenants this amount without delay, the 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 due to insufficient evidence, without leave to reapply.

The landlord is ordered to return the tenants' security deposit of \$1,100 and pet damage deposit of \$1,100, immediately, and the tenants are issued a monetary order in the amount of those deposits in the amount of \$2,200, 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: December 21, 2022