



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF, MNSD

Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

. The tenants were represented by legal counsel. The landlord was self-represented.

Issue to be Decided

Should the landlord's Application be heard at the Supreme Court of British Columbia ("SCBC") or the Residential Tenancy Branch ("RTB")?

Background and Evidence

The tenants originally filed an application at the RTB to which the landlord responded by filing this cross application. Due to ongoing and escalating circumstances, the tenants have filed an application to have this matter heard in the SCBC.

The tenants counsel produced SCBC pleadings relating to a pending action filed by the tenants on January 16, 2017 with the landlord named as the defendant as a result of this tenancy. The landlord confirmed that she was aware of that filing but feels it's unnecessary and doesn't want to address the matter in Supreme Court.

Analysis

Section 58 of the *Act* states the following, in part:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless...

(c) the dispute is linked substantially to a matter that is before the Supreme Court.

(4) The Supreme Court may

(a) on application, hear a dispute referred to in subsection (2) (a) or (c), and

(b) on hearing the dispute, make any order that the director may make under this Act.

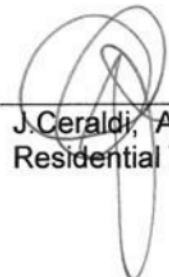
I find that the landlord's Application is linked substantially to a matter that is currently before the SCBC, as per section 58(2)(c) of the *Act*. It is clear from the orders sought by the tenant that they are seeking a determination from the SCBC regarding the issues regarding this tenancy.

Conclusion

I advised all parties during the hearing that I decline to exercise jurisdiction over the landlord's Application.

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: January 23, 2017



J. Ceraldi, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.gov.bc.ca/landlordtenant) has information about:

- How and when to enforce an order of possession:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to enforce a monetary order:
Visit: www.gov.bc.ca/landlordtenant/orders
- How and when to have a decision or order corrected:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the correction process
- How and when to have a decision or order clarified:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the clarification process
- How and when to apply for the review of a decision:
Visit: www.gov.bc.ca/landlordtenant/review to learn about the review process
Please Note: Legislated deadlines apply

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant

Residential Tenancy Branch

#RTB-136 (2014/12)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No: 812703

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Regarding a rental unit at: s.22

Date of Hearing: October 31 and November 15, 2013, by conference call.

Date of Decision: November 15, 2013

Attending:

For the Landlord: s.22

For the Tenant:



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

The landlord applies for a monetary award for damages claiming the tenants caused damage to the premises.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the relief claimed?

Background and Evidence

The rental unit is a two bedroom suite in a duplex. The tenancy started December 1, 2012 and ended in mid-September 2013. The monthly rent was \$1280.00. The landlord holds a \$640.00 security deposit and a \$640.00 pet damage deposit.

The landlord claims that prior to this tenancy she had conducted extensive renovations to the rental unit and that virtually the entire interior, including appliances, was brand new. Her photos appear to corroborate that testimony.

The landlord claims that during the tenancy the tenants “destroyed” the rental unit, however she seeks compensation only for: a) replacement of a laminate bedroom floor, b) repair of wall damage (holes), c) repair of three doors, d) replacement of the kitchen countertop, and e) replacement of the refrigerator door.

The evidence shows the bedroom floor to have been marked with a significant donut-like mar approximately 1.5 metres in diameter, near the centre of the room. The tenants acknowledge the mark, saying that one of their chairs left it.

The landlord produced a few photos of what appear to be small holes in the walls of the rental unit. The tenants acknowledge they hung pictures during their tenancy but say that the holes were filled when they left, as directed by the Residential Tenancy Policy Guidelines, and so they are not responsible to pay for any more work on the walls.

The landlord testified the tenants had somehow damaged three doors. Her evidence was far from clear about what the damage was. She referred to two or three out-of-focus pictures possibly indicated a few small chips in door frames.

In regard to the kitchen countertop, a counter incorporating the kitchen sink, the landlord's photos show significant marring over an area of about 25cm X 25cm. The tenants claim it to be reasonable wear and tear.

The landlord submits photos of the brushed aluminum fridge showing what appear to be fine scratches on the front of the door and on the side of the fridge. The tenants say that the scratches on the side are not scratches but rather a piece of packing tape never removed from the fridge when new.

Analysis

I find that these premises were in "brand new" condition at move-in.

The landlord's evidence does not show that the tenants damaged the wall beyond what might normally be expected by tenants hanging pictures and the like in their residential premises. I dismiss that item of the landlord's claim.

The evidence does show that one or more door frames suffered chipping. The extent is not readily discernible nor is it clear that anything more than a minor touch up is required to restore them. In all the circumstances the evidence does not show that the damage exceeds reasonable wear and tear incurred by the normal use of the doorway. I dismiss this item of the claim.

The bedroom floor has suffered significant damage. It is well beyond wear and tear. It should have been repaired by the tenants before they returned possession to the landlord. It appears that the landlord has not carried out the repair and, indeed, has re-rented the unit at a higher rent. That is not a relevant consideration in my opinion. The tenants are responsible for the damage and the landlord is entitled to be compensated for the cost of repair, whether the repair has been effected by the date of the hearing or not. The landlord's quote from Ace Construction is the only evidence of the cost of

repair. I accept that quote and award the landlord the amount of \$6843.50. It is not apparent that Ace Construction is a G.S.T. registrant and so I make no provision for tax.

The kitchen countertop has suffered significant damage. The damage shown in the landlord's photos is far in excess of blemishing associated with normal use. Someone has wilfully or recklessly damaged the top. In many cases there will have been a build up of "wear and tear" to a heavily used area like a kitchen countertop over the years and to which the marring shown in this case might not have been a significant addition. However, here the countertop was new. It should have been repaired or replaced by the tenants before returning possession to the landlord. There is no evidence that the counter top is repairable. I accept the Ace Construction estimate for replacement and award the landlord \$1350.00.

The fridge door has suffered damage in excess of reasonable wear and tear. The landlord's photos show that the front of the door has been badly scuffed with fine scratches running into the metal surface. The tenants should have had it repaired or replaced before returning the rental unit to the landlord. I award the landlord the cost of a new door; the amount of \$580.00 according to her testimony. There was no evidence of the cost of installation of such a door. I make no award in that regard.

Conclusion

The landlord is entitled to a monetary award totalling \$8773.50 plus the \$100.00 filing fee for this application. I authorize the landlord to retain the \$1280.00 of deposits she holds, in reduction of the amount awarded. There will be a monetary order against the tenants jointly and severally for the remainder of \$7593.50.

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: November 15, 2013



G. Molnar, Arbitrator
Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

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Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order (Please Note: Legislated deadlines apply)*

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Residential Tenancy Branch

#RTB-136 (2011/07)





Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

File No. 812703

Date: November 15, 2013

In the matter of the *Residential Tenancy Act*, SBC 2002, c. 78, as amended

Between

s.22

Landlord(s),

Applicant(s)

And

s.22

Tenant(s),

Respondent(s)

Re: An application pursuant to sections 65, 67 of the *Residential Tenancy Act* regarding a rental unit at:

s.22

ORDER

I ORDER that you the tenants^{s.22} jointly and
severally pay to the landlord^{s.22} the sum of \$7593.50.

I FURTHER ORDER that a copy of this order be served on each tenant at least 48 hours before enforcement against that tenant.

Dated: November 15, 2013

G. Molnar, Arbitrator
Residential Tenancy Branch