



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords made application for a monetary Order for damages to the rental unit; for a monetary Order for money owed or compensation for damages or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution, in which the Tenants made application for a monetary Order for money owed or compensation for damages or loss; for the return of their security deposit, and to recover the filing fee from the Landlords for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me. Neither party called a witness to the hearing.

Issue(s) to be Decided

The issues to be decided in relation to the Landlords' Application for Dispute Resolution, are whether the Landlords are entitled to compensation for damages or losses they incurred as a result of this tenancy; whether they are entitled to retain all or part of the security deposit; and whether they are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenants' Application for Dispute Resolution, are whether the Tenants are entitled to compensation for damages or losses they incurred as a result of this tenancy ending; whether they are entitled to the return of their security deposit; and whether they are entitled to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlords and the Tenants agree that this tenancy began on October 30, 2008 or October 31, 2008 and that it ended on March 31, 2009, during which time the Tenants were required to pay monthly rent of \$750.00. The parties agree that the Tenants paid a security deposit of \$375.00. The Tenants contend that the security deposit was paid on October 30, 2008 and the Landlords contend that it was paid on October 31, 2008. There is a tenancy agreement, which is signed by both parties, which declares that the security deposit was paid on October 31, 2009.

The Landlords and the Tenants agree that no formal condition inspection report was completed at the beginning of the tenancy, although it is noted in the tenancy agreement that “an inspection was done prior to moving in and everything was fine”.

Two condition inspection reports were submitted in evidence. One of the reports lists the alleged condition of the rental unit at the beginning of the tenancy. The female Landlord stated that she completed this report at the end of the tenancy in anticipation of completing a condition inspection report at the end of the tenancy. She stated that the Tenants took this report with them on March 31, 2009, after they refused to participate in a condition inspection.

The second inspection report lists the alleged condition of the rental unit at the beginning of the tenancy and at the end of the tenancy. The female Landlord stated that she completed this report at the end of the tenancy in anticipation of completing a condition inspection report at the end of the tenancy. She stated that she had to rewrite the report because the Tenants left with the first copy she had prepared. She acknowledged that the notations relating to the condition of the rental unit at the end of the tenancy were made in the absence of the Tenants.

The female Tenant stated that they participated in a cursory inspection of the rental unit at the end of the tenancy, at which time she was handed the first inspection report. She stated that she believed the notations on the report represented the alleged condition of the rental unit at the end of the tenancy, which indicated that the rental unit was in good condition. She stated that they were given a copy of the report and they left.

The Landlords are seeking compensation, in the amount of \$140.00, for cleaning the carpets in the rental unit at the end of the tenancy. The Landlords stated that the carpets were very dirty at the end of the tenancy and that they needed to be cleaned twice. The Landlords submitted letters from three people who stated that the carpets

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were dirty and in need of cleaning. The Landlords cleaned the carpets themselves, which they estimate took approximately eight hours. The Landlords submitted an estimate from a cleaning company that indicates the carpets could have been cleaned and deodorized for \$139.00.

The Tenants stated that the carpets were clean at the end of the tenancy and did not require cleaning. The female Tenant stated that they had only lived in the rental unit for a few months so the carpets could not have required significant cleaning. She stated that they had cats but they used a litter box.

The Landlords are seeking compensation, in the amount of \$351.09, for cleaning the rental unit at the end of the tenancy. The Landlords stated that they had to clean the walls, the cupboards, fridge, the stove, and the sink in the rental unit. The Landlords submitted letters from three people who stated that the rental unit was dirty and in need of cleaning. The Landlords cleaned the rental unit themselves, which they estimate took approximately 7.5 hours. The Landlords submitted receipts, in the amount of \$51.09, for cleaning supplies.

The Tenants stated that they cleaned the rental unit although they acknowledge that they did not have time to clean the fridge and the stove.

The Landlords submitted photographs that show the oven needed significant cleaning and other areas, including the fridge and sink, required a small amount of cleaning. Other areas that are visible in the photographs submitted by the Landlord indicate that the rental unit was left reasonably clean. The Tenants submitted photographs of the rental unit that show the rental unit was left in reasonably clean condition.

The Landlords are seeking compensation, in the amount of \$15.00, for repairing/replacing blinds that they contend were damaged during this tenancy. The Landlords submitted a photograph of a set of blinds that has two bent panels. The male Tenant stated that the blinds were damaged prior to the beginning of the tenancy.

The Landlords are seeking compensation, in the amount of \$100.00, for repairing a countertop that they contend was burned during this tenancy. The Landlords submitted a photograph that shows the countertop was burned. The female Tenant stated that the counters were burned prior to the beginning of the tenancy.

The Landlords are seeking compensation, in the amount of \$15.00, for replacing three small mirrors that were missing at the end of the tenancy. The male Tenant stated that there were only five small mirrors in the rental unit at the beginning of the tenancy and that all of the mirrors were in the rental unit at the end of the tenancy.

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The Landlords were originally seeking compensation, in the amount of \$1,052.26, for the cost of replacing the carpets however they withdrew this portion of their Application for Dispute Resolution as they were able to clean the carpet to their satisfaction.

The Tenants are claiming compensation, pursuant to section 51(2) of the *Act*, because they believe the Landlords' mother/mother-in-law did not move into the rental unit. The Tenants submitted no evidence to support this allegation. The female Landlord stated that her mother moved into the rental unit in April of 2009.

The Tenants are claiming compensation, in the amount of \$100.00, for moving costs they incurred when they were served with a Notice to End Tenancy pursuant to section 49 of the *Act*.

The Landlords and the Tenants are both claiming compensation for costs associated to participating in this dispute resolution proceeding. As I do not have authority to awards such costs, with the exception of filing fees, I decline to consider these claims.

Analysis

I find the notation in the tenancy agreement that declares "an inspection was done prior to moving in and everything was fine" to be of limited value in determining the condition of the rental unit at the beginning of the tenancy, as it does not provide a descriptive report of the condition of the rental unit. I find the term "everything was fine" is subjective and does not provide details about the condition of specific items in the rental unit. Section 23 of the *Residential Tenancy Act (Act)* requires landlords to complete a condition inspection report at the beginning of the tenancy for the purposes of preparing a detailed record of the condition of the rental unit. This report protects both the landlord and the tenant.

I find the condition inspection report that was completed at the end of the tenancy in the absence of the Tenants to be of limited value in determining the condition of the rental unit at the end of the tenancy, as there is no indication that the Tenants agreed with the content of the report at the time the report was completed. Although the Landlords contend that the Tenants refused to participate in the completion of the unit inspection at the end of the tenancy, I accept that the Tenants believed they had participated in that inspection. In reaching this conclusion, I was strongly influenced by the evidence that shows the Landlords gave the Tenants a partially completed inspection report that indicated the rental unit was in good condition. Although the report that was handed to the Tenants actually indicated that the rental unit was in good condition at the beginning

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of the tenancy, I find it reasonable for the Tenants to assume that they had been given a report that indicated the rental unit was in good condition at the end of the tenancy.

I find that the Tenants failed to comply with section 37(2) of the Act when they failed to clean the carpets at the end of the tenancy. Although this tenancy only lasted five months, the Tenants acknowledged that they kept an uncaged cat in the rental unit, which used a litter box. In these circumstances I find it reasonable that the Tenants clean the carpets to rid the carpet of any residual smells that may have been left by the cat.

As the Tenants failed to clean the carpet at the end of the tenancy, I find that the Landlords are entitled to compensation for cleaning the carpet. Based on the estimate submitted by the Landlords, which indicates the carpet could have been professionally cleaned for \$139.00, I find that the Landlords are entitled to compensation in the amount of \$139.00 for cleaning the carpet.

I find that the Tenants failed to comply with section 37(2) of the Act when they failed to clean the fridge and the stove at the end of the tenancy, which was not disputed by the Tenants. I find that the Landlords failed to establish that the Tenants did not leave the remainder of the rental unit in reasonably clean condition. In reaching this conclusion, I relied heavily on the photographs that were submitted by the Tenants, which show the unit is reasonably clean, with the exception of the stove and fridge. I find this photographic evidence to be more compelling than the written evidence provided by the witnesses for the Landlords, as the photographs allow me to form an unbiased opinion of the condition of the rental unit.

On the basis of the photographs provided by the Tenants, I estimate that it would take no more than four hours to clean the rental unit. As the Landlords' cleaned the rental unit themselves I find they are entitled to compensation of \$80.00, which is calculated at a rate of \$20.00 per hour, which I find to be reasonable compensation for labour of this nature. I also find they are entitled to compensation, in the amount of \$26.47, for materials associated to cleaning the stove but I dismiss their claim for compensation for other cleaning materials as they cannot be directly associated to the need to clean the fridge and stove.

After hearing the statements of both parties regarding the damaged blinds, I find that the Landlords have failed to establish the condition of the blinds at the beginning of the tenancy. I find that the reference to the condition of the rental unit in the tenancy agreement is vague and could not be interpreted to mean there are no minor flaws in the rental unit, such as bent blinds.

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There is a general legal principle that places the burden of providing that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlords and I find that the Landlords have submitted insufficient evidence to show that the blinds were in good condition at the beginning of the tenancy. As the Landlords have failed to establish that the blinds were in good condition at the beginning of the tenancy, I find that they are unable to show that the Tenants' damaged the blinds. As the Landlords have failed to establish that the Tenants damaged the blinds, I dismiss the Landlords' application for compensation for damage to the blinds.

After hearing the statements of both parties regarding the damaged countertops, I find that the Landlords have failed to establish the condition of the counters at the beginning of the tenancy. I find that the reference to the condition of the rental unit in the tenancy agreement is vague and could not be interpreted to mean there are no minor flaws in the rental unit, such as minor burns to the countertops. As the Landlords have failed to establish that all the counters were in good condition at the beginning of the tenancy, I find that they are unable to show that the Tenants' damaged the counters. As the Landlords have failed to establish that the Tenants damaged the counters, I dismiss the Landlords' application for compensation for damage to the blinds.

After hearing the statements of both parties regarding three missing mirrors, I find that the Landlords have failed to establish that there were eight small mirrors in the rental unit at the beginning of the tenancy, three of which are now allegedly missing. As the Landlords have failed to establish the number of mirrors in the rental unit at the beginning of the tenancy, I find that they are unable to show that the Tenants' removed any of them from the rental unit. As the Landlords have failed to establish that the Tenants took or damaged any of the small mirrors, I dismiss the Landlords' application for compensation for replacing three small mirrors.

In the absence of evidence to corroborate the Tenants' suspicion that the Landlords did not accomplish their stated purpose for ending the tenancy under section 49 of the *Act*, I find that the Tenants are not entitled to compensation pursuant to section 51(2) of the *Act*.

There is no evidence to show that this tenancy was ended unlawfully. In the absence of evidence that shows this tenancy was ended unlawfully, I dismiss the Tenants' application for compensation for moving costs. Moving costs would only be considered if it were shown that the Tenants moved as a direct result of the Landlord not complying with the *Act*.



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I decline to award either party compensation for the costs of filing an Application for Dispute Resolution, as I am not satisfied that this resolution could not have been reached if both parties had made a reasonable effort to resolve this dispute.

Conclusion

I find that the Landlords have established a monetary claim for damages, in the amount of \$245.47 and I hereby authorize the Landlords to retain that amount from the Tenants' security deposit.

I find that the Landlords are required to return the remaining portion of the security deposit, which is \$129.53, plus interest of \$0.97. Based on these determinations I grant the Tenants a monetary Order for that amount of \$130.50. In the event that the Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia 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: July 16, 2009.

Dispute Resolution Officer