



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 matter dealt with an application by the Landlord for a monetary order for compensation for damages to the rental unit, for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on December 4, 2008 and ended on March 29, 2009. Rent was \$2,500.00 per month. The Tenants paid a security deposit of \$2,500.00 at the beginning of the tenancy, however the Landlord returned \$1,250.00 of that deposit at the end of the tenancy.

The Landlord said that at the beginning of the tenancy, he left a condition inspection report at the rental unit for the Tenants but they never completed and returned it as he requested. The Landlord did a move out condition inspection with the Tenants on April 3, 2009 however, the Tenants refused to sign the report.

The Landlord claimed that the Tenants did not leave the rental unit reasonably clean and as a result, he incurred expenses for general cleaning. He also claimed that vertical blinds were stained and that he believes the stains cannot be removed by cleaning.

The Landlord said that the Tenants damaged a hardwood floor, some walls and baseboards, 2 night tables and a coffee table, a sofa, a kitchen drawer, a dresser drawer, a vacuum, a barbeque cover, a garbage can, a picture frame and a bed sheet. The Landlord argued that given the short duration of the tenancy many of these damages were not reasonable wear and tear.

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The Tenants admitted they refused to sign the move out condition inspection report but said the Landlord moved back into the rental unit on March 29th and therefore had already been living in the rental unit for 5 days at the time of the inspection. The Tenants argued that the rental unit was reasonably clean at the end of the tenancy. The Tenants also claimed that they had no knowledge as to whether the vertical blinds were stained during the tenancy or were in that condition at the beginning of the tenancy.

The Tenants claimed that many of the damages alleged by the Landlord such as the floor, the sofa, the side tables and coffee table, the vacuum, and the kitchen and dresser drawers existed at the beginning of the tenancy. The Tenants said they had no knowledge of damage to a barbeque cover, picture frame or bed sheet. The Tenants admitted to damaging a garbage can. The Tenants admitted that they may have contributed to some water spots on some night tables but could not be certain. The Tenants said that the Landlord was aware at the beginning of the tenancy that there was a tear in the sofa cushion that it could not be repaired and would only get worse with use. The Tenants argued that many of the wall damages alleged by the Landlord were minor in nature and were the result of reasonable wear and tear.

Analysis

Section 37 of the Act says that at the end of a tenancy a Tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 23 of the Act says that the Landlord and Tenant together must inspect the rental unit. Section 24 of the Act says that a Landlord's right to claim against a security deposit for damage to residential property is extinguished if the Landlord does not comply with s. 23 of the Act. Section 35 of the Act uses the same wording but adds that the move out inspection must be done before a new tenant occupies the rental unit. It also states that the Landlord and Tenant must both sign the condition inspection report.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this case, the Tenants dispute that they were responsible for damages to the floor, coffee table, a kitchen drawer, a dresser drawer, a vacuum, a picture frame and a bed sheet. The Tenants also said that they did not know if they were responsible for

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damages to vertical blinds, 2 night tables, a barbeque cover and a sheet because they were unaware of their condition at the beginning of the tenancy. The Tenants claimed they were willing to contribute to the cost of cleaning the blinds as an act of good faith but did not admit to causing the stains. In the absence of a condition inspection report or other corroborating evidence, I find that there is insufficient evidence to support the Landlord's claim for damages to these items and that part of his application is dismissed.

The Tenants also claimed that they should not be responsible for tears in the sofa because the Landlord knew it was irreparably damaged at the beginning of the tenancy but took no steps to replace the damaged cushion. In the circumstances, I agree, as a Landlord cannot hold a Tenant responsible for damage that is caused due to a Landlord's failure to repair. Consequently, this part of the Landlord's application is dismissed.

The Tenants further argued that they should not be responsible for repairs to the walls and added that the damages were reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion." The Landlord provided photographs of some of the damages in question which include scuff marks on a wall and baseboards, gouges in a door frame, baseboards and a wall and a Tootsie-sized hole in a wall. With the exception of the scuff marks, I find that these damages are not reasonable wear especially for a tenancy of less than 6 months.

The Tenants argued that there was no evidence that the damages to the walls occurred during the tenancy. The Landlord argued that the damages did not exist when he occupied the rental unit immediately prior to the tenancy and relied on an e-mail dated December 1, 2008 to the Tenants in which he identified existing damages. I find that this e-mail does not have the same evidentiary value as a condition inspection report because it is based solely on the Landlord's observations and without any other corroborating evidence, I find that there is insufficient evidence to hold the Tenants responsible for repairs to the walls. The Tenants admitted that they were responsible for damaging a garbage can and as a result, I find the Landlord is entitled to recover \$30.00 for that item.

With respect to cleaning expenses, I find on a balance of probabilities that the rental unit was not reasonably clean at the end of the tenancy. The written statement of Teresa Badowich states that she spent a number of hours cleaning dirty kitchen countertops, cupboards and appliances as well as bathroom cupboards. Consequently, I find that the Landlord is entitled to recover \$60.00 for this expense. I find that the Landlord is not entitled to recover a further \$165.50 for cleaning as there is no evidence as to what cleaning was done in support of that amount.



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As the Landlord has been substantially unsuccessful in this matter, I find that this is not an appropriate case to award reimbursement of the filing fee and that part of his application is also dismissed.

Notwithstanding s. 24 of the Act, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep \$90.00 from the Tenants' security deposit to compensate him. I order the Landlord to return the balance of the Tenants' security deposit to them as follows:

Security Deposit:	\$1,250.00
Accrued interest:	<u>\$1.43</u>
Subtotal:	\$1,251.43
Less: Damage award:	<u>(\$90.00)</u>
Total owing:	\$1,161.43

Conclusion

A monetary order in the amount of **\$1,161.43** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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