Dispute Resolution Services

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 Landlords for a monetary order for damages to the rental unit and to recover late fees and the filing fee for this proceeding. The Landlords also applied to keep the Tenants' security deposit. The Tenants applied for the return of their security deposit and to recover the filing fee for this proceeding.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on May 1, 2008 and ended on March 31, 2009. Rent was $850.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $425.00 at the beginning of the tenancy.

The Landlords claim that the Tenants were responsible for staining a bedroom carpet and damaging a linoleum floor in the bathroom. In support, the Landlords said that when they did a move in condition inspection report with the Tenants both floors were in good condition. The Landlords claim that the carpet was newly installed in January, 2008 and that the linoleum was installed in December 2007. The Landlords also claim that there was only one other set of tenants residing in the rental unit after the new flooring was installed.

The Landlords argued that the Tenants allowed water from the shower to run down the wall and under the bathroom flooring causing the linoleum in that area to turn black. The Landlords said the Tenants never advised them about this problem until the end of the tenancy. The Landlords also said that despite the Tenants' attempts to clean the carpet, the stain could not be removed. In support, the Landlords provided a witness statement from the current tenant to that effect.

The Landlords also claimed late payment fees from the Tenants. The Landlords said the tenancy agreement provided that a $25.00 late payment fee would apply to all late rent payments. The Landlords also said that the Tenants were late paying rent for June, July, November and December 2008.

The Tenants admit that they stained the bedroom carpet but argued that the Landlords did not have to replace it but rather could repair the carpet at a reduced cost. The Tenants claim that a section of the carpeting appears to have been replaced as there is a visible seam. The Landlords claim that they were advised that this kind of carpeting (ie. burbur) could not be patched.

The Tenants claim that there was water damage to the bathroom floor at the beginning of the tenancy. The Tenants also claim that a move in condition inspection was not done until mid-June 2008 rather than May 10, 2008 as indicated on the report. The Tenants said that they did not receive a copy of that report until after the tenancy ended and suggested that it might have been altered. In any event, the Tenants argued that the Landlords spent only 10 minutes doing the move in condition inspection and that had the Landlords given the inspection more time and attention, they would have noticed the water damage.

The Tenants relied on the evidence of the previous tenant who claimed that at the end of his tenancy (Nov. 30/07) he painted over mould on the wall by the shower that was not protected by a water barrier. He also claimed that he noticed a bump under the linoleum floor in the same area. The Tenants provided a photograph of the bathroom area at the beginning of their tenancy showing the repair to the wall. The Landlords claimed that they were never advised by their former tenant that he had painted over any mould in the bathroom. The Landlords also claimed that the bump in the floor was caused by a defective piece of plywood rather than from water absorption.

The Tenants also claimed that on at least 2 occasions when the Landlords came to the rental unit, they advised the Landlords about water coming out of the shower and damaging the floor. The Tenants said the Landlords (who lived out of the province) did not want to deal with their problems when they called and often delayed doing repairs for months. As a result, the Tenants claimed that they usually advised one of the Landlords' parents (who lived in the community) about any concerns and they would relay the information to the Landlords. The Tenants said that on at least one occasion, they told the Landlords' parents about water leaking onto the floor. Consequently, the Tenants also argued that the damages were caused from the shower area not being properly water proofed and from the Landlords failing to do repairs in a timely manner.

The Tenants admitted to paying rent late on certain occasions, but said it was the result of the bank holding funds. The Tenants claimed that they received a letter from the Landlords dated April 23, 2009 in which the Landlords advised the Tenants they had 4 late payments and that any "future late rental payments" would result in a $25.00 late fee or a notice to end tenancy.

Analysis

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible for 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."

There is no dispute that the Tenants stained the bedroom carpet; the issue is whether the Tenants are responsible for replacing the carpet. The Landlords claim that the carpet has to be replaced because it cannot be salvaged by replacing only the stained section. The Tenants claim that the carpet can be repaired and that there appears to be a section of it that has already been replaced. The Landlords bear the onus of proving that the carpet cannot be repaired. Given the contradictory evidence of the Parties on this point and in the absence of any corroborating evidence to resolve the contradiction, I find that there is insufficient evidence to conclude that the carpet cannot be repaired. As there is no evidence as to what the cost to repair the carpet would be, I award the Landlords **$137.96** representing the reduced value of the section of the damaged carpet (ie. 16 sq. ft / 196 sq. ft x $1690.00).

Section 21 of the Regulations to the Act says that "a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit on the date of inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary." I do not place a lot of significance on the Tenants' complaint that the move in condition inspection was not done until mid-June 2008. The Tenants admitted that the condition of the rental unit had not changed from May 1, 2009 when they moved in until mid-June. Rather the Tenants' real complaint was that the damage to the bathroom at the beginning of the tenancy was overlooked because the Landlords did not spend enough attention to certain details.

Despite the Tenants' argument, I find that there is no evidence of water damage to the bathroom floor at the beginning of the tenancy. I also find on a balance of probabilities that water escaped from the shower area and splashed on the surrounding walls and floor because the shower curtain and small splash guard were inadequate to prevent water from escaping. I accept the evidence of the previous tenant that this was an issue during his tenancy. In the circumstances, I do not agree with the Landlords' opinion that the bump in the plywood under the floor in the same damaged area (that was replaced prior to the tenancy) was due to a defect in the wood rather than caused by water absorption. Consequently, I conclude that water leakage from the shower has been and will likely continue to create a risk of damage until such time as the shower area is enclosed or complies with current Building Codes (ie. for water barriers).

The Landlords argued that the Tenants should be responsible for the damage in any event as they allowed the damage to get worse over the space of almost a year without notifying the Landlords. The Tenants argued that they told the Landlords about the problem a number of times but the Landlords failed or refused to do anything about it. I find on a balance of probabilities that had the Tenants advised the Landlords about water progressively damaging the floor that the Landlords would have taken steps to address the problem. Consequently, I conclude that the Tenants did not advise the Landlords about the problem with the shower during the tenancy although they knew it was an issue. Consequently, I find that the Tenants are partially responsible for the damages to the bathroom floor which I assess at 50% of the (installed) replacement cost or **$302.40**.

I find that the Landlords in their letter of April 23, 2009 to the Tenants waived payment of the late fees for June, July, November and December 2008. I make this finding having regard to the fact that the Landlords did not ask for payment of the late fees in that letter but instead said that there would be a charge for "***future*** late rent payments." Consequently, this part of the Landlords' claim is dismissed.

Section 38(1) of the Act says that a Landlord has 15 days from the later of the end of the tenancy or the date they receive a tenant's forwarding address in writing to either return the security deposit or to apply for dispute resolution. If a Landlord fails to do either of these things and does not have the tenant's written consent to keep the security deposit, then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit to the tenant.

I find that the Tenants gave their forwarding address in writing to the Landlords on March 31, 2009 when they completed the move out condition inspection report and did not give their written consent for the Landlords to keep the security deposit. I also find that the Landlords completed a draft of an online application for dispute resolution on April 15, 2009 but they did not submit their application to the Residential Tenancy Branch until April 24, 2009. Consequently, I find that the Landlords are in contravention of s. 38(1) of the Act and must return double the amount of the Tenants' security deposit plus accrued interest (on the original amount).

As the Tenants have been successful on their application, I find that they are entitled to recover their **$50.00** filing fee. However, as the Landlords have only been partially successful they are entitled to recover one-half of their filing fee or **$25.00**.

Section 24(2)(c) and s. 36(2)(c) of the Act and s. 18 of the Regulations to the Act state that if a landlord does not provide a tenant with a copy of the signed move in condition inspection report within 7 days or the move out condition inspection report within 15 days, the landlord's right to claim against the security deposit for damages to the rental

unit is extinguished. The Tenants claim the Landlords did not provide them with a copy of the move in condition inspection report which the Landlords deny. However, the Landlords admit that they sent a copy of the move out condition inspection report to the Tenants with their evidence package in this matter and as a result, I find that the Landlords did not comply with s. 36(2) of the Act.

However, 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 Landlords to keep **$465.36** from the Tenants' security deposit to compensate them for the damages. I also order the Landlords to return the balance of the security deposit plus accrued interest to the Tenants as follows:

	Tenants' claim	
	Double sec. dep.:	$850.00
	Accrued interest:	$4.52
	Filing fee:	$50.00
	Subtotal:	$904.52
Less:	Landlords' claim	
	Carpet damage:	$137.96
	Linoleum damage:	$302.40
	Filing fee:	$25.00
	Subtotal:	$465.36

Conclusion

A monetary order in the amount of **$439.16** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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 22, 2009.

Dispute Resolution Officer