



Dispute Resolution Services

Page: 1

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 compensation for damages to the rental unit as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenants' security deposit to offset the alleged damages. The Tenants applied for the return of their security deposit plus compensation for the Landlord's alleged failure to comply with the Act and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
2. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This tenancy started on November 1, 2008 and ended on May 31, 2009. Rent was \$1,400.00 per month. The Tenants said they paid a security deposit of \$1,400.00 at the beginning of the tenancy.

The Parties did a move in inspection report on October 31, 2008. The Parties also did a move out inspection on May 31, 2009, however, the Landlord did not complete a move out condition inspection report, but rather made a list of damages for which she claimed the Tenants were responsible. The Tenants claim that the Landlord did not provide them with her list of damages until after the first day of this hearing. Each of the Parties provided photographs of the rental unit. The Tenants photographs were taken during the move out inspection and the Landlord claimed that she took her photographs on or about June 10, 2009.

The Landlord claimed that the Tenants damaged a sink, walls and a hardwood floor. The Landlord argued that the sink would have to be replaced, the hardwood floor would have to be refinished and that the walls would have to be repaired and repainted. The Landlord admitted that the rental unit had not been repainted for approximately 5 – 7 years.

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord also claimed that there was dirt around the perimeter of some of the carpets, a stain on the master bedroom carpet and the recreation room carpet as well as mould or mildew stains on the windows and a build up of grease on the stove. The Landlord said she received a verbal estimate for the cost of cleaning and repairing all of these items.

The Tenants argued that the sink, wall and floor damages alleged by the Landlord were reasonable wear and tear. In particular, the Tenants argued that the porcelain sink had small scratches at the beginning of the tenancy and that any further scratches were just the result of doing dishes on a daily basis. The Tenants claimed that the sink could easily be repaired with a kit that cost \$30.00. The Tenants also argued that the scratches on the wood floor were minor in that they were not deep and were barely noticeable in their photographs. The Tenants said there was no evidence of boards popping out from moisture (or pet urine) during the move out inspection as later alleged by the Landlord.

The Tenants also argued that they filled all nail holes and that there were only minor scratches to the walls. The Tenants claimed that the walls were discoloured and had some marks on them at the beginning of the tenancy and the Landlord advised them at the beginning of the tenancy that it had not been painted for some time.

The Tenants said that they had the carpets professionally cleaned at the end of the tenancy and they denied that there were any new stains as alleged. The Tenants argued that their photographs showed that there was no stain on the master bedroom carpet and they claimed that the Landlord said it looked fine during the move out inspection. The Tenants also argued that the stain in the recreation room carpet was there at the beginning of the tenancy (as shown on the move in condition inspection report). The Tenants further argued that the dirt around the perimeter of the carpet in some rooms was due to an accumulation of dirt and debris because someone had removed the baseboards.

The Tenants claimed that the window sills had stains from mould or mildew because the windows were only single pane and the Landlord acknowledged that they had to be replaced. The Tenants said they scrubbed the mildew from the window sills but the stains remained from build up over the years. The Tenants also said that they cleaned the oven but admitted that they were unaware of a grease trap on the stove so they did not clean it. The Tenants argued that the Landlord had not provided any reliable evidence of the cost of cleaning or repairs. The Tenants also argued that the list of damages prepared by the Landlord was unreliable because it included items that were not mentioned by the Landlord during the move out inspection.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit and pet damage deposit or to make an application for dispute resolution to make a claim against them. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit or pet damage deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit and pet damage deposit.

I find that the Tenants gave their forwarding address in writing to the Landlord on May 31, 2009. Consequently, the Landlord had until June 15, 2009 to make an application for dispute resolution to make a claim against the Tenants' security and pet damage deposits. I find that the Landlord made an application for dispute resolution on June 10, 2009 and as a result, s. 38(6) does not apply.

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect (or of someone he permits in the rental unit) 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."

Section 21 of the Regulations to the Act says that "a condition inspection report completed in accordance with the Act and Regulations is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary." I find that the Landlord's move in inspection report substantially complies with s. 20 of the Regulations (although it is missing some items which that section says must be included). Consequently, I conclude that the move in inspection report accurately reflects the condition of the rental unit at the beginning of the tenancy.

However, I find that the Landlord's list of damages does not comply with s. 20 of the Regulations to the Act and therefore is not reliable evidence of the state of repair and condition of the rental unit at the end of the tenancy. I also find that the Landlord's photographs taken almost 2 weeks after the tenancy ended are not reliable especially since they are contradicted in some respects by photographs that were taken by the Tenants during the move out inspection with the Landlord present. Consequently, I find that the photographs taken by the Tenants are more reliable than those provided by the Landlord and give them more weight.

Residential Tenancy Branch
Ministry of Housing and Social Development

In this matter, the Landlord has the burden of proving that the alleged damages were caused by some act or neglect of the Tenants and that it was not reasonable wear and tear. I find, however, that there is insufficient evidence that the scratches on the wood floor are damages as opposed to wear and tear. The Landlord provided extreme close up pictures of one or two parquet squares that show some dark marks and scratches and depressions. The scratches and depressions are not visible in the Tenants' photographs. In the absence of any further evidence from the Landlord to contradict the Tenants' evidence that this is reasonable wear and tear, I find that there is insufficient evidence to support this part of the Landlord's claim and it is dismissed.

I find that the extensive scratches on the porcelain sink are not reasonable wear and tear. Even if the Tenants used it every day to do dishes, I note that the tenancy was only 6 months long and as a result, I find that this damage was more likely due to the Tenants' neglect. I also find however, that there is evidence that the sink can be repaired for approximately \$30.00 rather than have to be replaced as suggested by the Landlord. Consequently, I award the Landlord **\$30.00** for this part of her claim.

I find that the accumulation of dirt and debris around the perimeter of the carpet(s) is the direct result of the Landlord's failure to install baseboards and therefore I conclude that the Tenants clean the carpets as well as they could in the circumstances. I find that the black stains on the recreation room carpet are barely visible even in the extreme close up picture provided by the Landlord. The Landlord's photographs do show a rust coloured stain on the master bedroom carpet although it is not present in the Tenants' photographs taken almost 2 weeks earlier. Consequently, I find that there is insufficient evidence to support the Landlord's claim for carpet cleaning expenses and that part of her claim is dismissed.

I find that the damages to the bedroom(s) and bathroom walls are reasonable wear and tear especially given that the rental unit has not be painted for approximately 5 or more years. However, I find that the gouges in the corners of the stairway exceed reasonable wear and tear and accordingly, the Tenants are responsible for the cost to repair them. As a result, I award the Landlord **\$150.00** for that repair.

The Tenants did not dispute that they did not thoroughly clean a stove, but claimed that any mould or mildew on the window frames or sills were stains that could not be removed. Unfortunately, the Landlord's move in condition inspection report does not refer to the condition of the windows at the beginning of the tenancy. In the absence of any other evidence that the windows were stain-free at the beginning of the tenancy or that the dark marks were dirt rather than permanent stains, I find that there is insufficient evidence that this is damage caused by an act or neglect of the Tenants. Consequently, I find that the Landlord is entitled to recover **\$25.00** representing one hour to clean the stove.

Residential Tenancy Branch
Ministry of Housing and Social Development

As the Landlord has only been partially successful in this matter, I award her one-half of her filing fee or **\$25.00**. As the Tenants have been largely successful on their application, they are entitled to recover the \$50.00 they paid for their application. Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant. In failing to complete the condition inspection report when the Tenants moved out, I find the Landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the Landlord's right to claim against the security deposit for damages is extinguished.

I find however, 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 **\$230.00** from the Tenants' security deposit and accrued interest to compensate her for the damages. I order the Landlord to return the balance of the Tenants' security deposit as follows:

Security deposit:	\$1,400.00
Accrued interest:	\$3.50
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,453.50
Less: Damage award:	<u>(\$230.00)</u>
Balance owing:	\$1,223.50

Conclusion

A Monetary Order in the amount of \$1,223.50 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: December 01, 2009.

Dispute Resolution Officer