



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income, for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in payment of those amounts. The Tenants applied for the return of their security deposit plus compensation for the Landlords' failure to return the security deposit within the time limits required by the Act as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation for a loss of rental income?
2. Are the Landlords entitled to compensation for damages to the rental unit and if so, how much?
3. Are the Tenants entitled to the return of their security deposit and if so, how much?

Background and Evidence

This month to month tenancy started on July 1, 2002 and ended on June 15, 2009 when the Tenants moved out. Rent was \$895.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$447.50 at the beginning of the tenancy.

On May 13, 2009, the Tenants gave the Landlords written notice that they wanted to end the tenancy on June 15, 2009. In that notice, the Tenants asked the Landlords to return their post-dated cheques and advised the Landlords that they would issue a new cheque for June 2009. The Tenants said they paid the Landlords for one-half of the month of June 2009 and the Landlords did not say anything about requiring rent for the full month until after they filed their claim in this matter. Consequently, the Tenants argued that the Landlords waived payment of the full amount of rent for June 2009 (which the Landlords denied). The Landlords said they had to make some repairs as soon as the Tenants vacated the rental unit and they advertised it for rent at the end of June 2009.

Both Parties participated in a move in condition inspection report on June 24, 2002 and a move out condition inspection report on June 15, 2009. The Landlords also claim that

they took a video of the rental unit during the move in condition inspection and another video during the move out inspection. The Landlords also provided copies of photographs of the rental unit they said they took approximately a week after the Tenants moved out.

The Tenants said they gave the Landlords their forwarding address in writing on June 15, 2009 but in a letter to the Tenants, the Landlords claimed that they discovered “problems” that were not apparent during the move out inspection and as a result, the Landlords withheld \$316.16 for materials and labour and returned \$147.20 to the Tenants. The Tenants claimed that they did not give the Landlords written authorization to keep their security deposit. The Tenants also claimed that they have not cashed the Landlords’ cheque.

The Tenants argued that the Landlords were satisfied with the condition of the rental unit at the end of the tenancy but changed their position after the move out condition inspection report was signed. The Tenants also argued that many of the damages alleged by the Landlords either existed at the beginning of the tenancy or were the result of wear and tear during the 7 year tenancy.

Analysis

Tenants’ Application:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant’s forwarding address in writing (whichever is later) to either return the Tenant’s security deposit or to make an application for dispute resolution to make a claim against it. 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 then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the Landlords received the Tenants’ forwarding address in writing on June 15, 2009 but returned only \$147.20 of the security deposit to the Tenants and did not make an application for dispute resolution until October 2, 2009 to make a claim against the balance of the deposit for damages. I also find that the Landlords did not have the Tenants’ written authorization to keep the balance of the security deposit and as a result, pursuant to s. 38(6) of the Act, the Landlords must return double the amount of the unreturned portion of the security deposit ($\$300.30 \times 2 = \600.60) to the Tenants with accrued interest of \$15.86 (on the original amount). As the Tenants have been successful in this matter, I also find that they are entitled to recover their \$50.00 filing fee for this proceeding for a total monetary award of **\$666.46**.

Landlords' Application:

Under section 45 of the Act, a Tenant of a month-to-month tenancy must give one clear months notice they are ending the tenancy. Given that the Tenants gave their written notice on May 13, 2009, the earliest that Notice could take effect would have been June 30, 2009. The Tenants argued that the Landlords waived payment of rent for all of June by accepting payment for one half of that month and not seeking payment until after the Tenants applied for dispute resolution. However, in the absence of an express waiver from the Landlords that they would not be seeking a loss of rental income for June 2009, I find that the Tenants are responsible for all of June 2009 rent and as a result, the Landlords are entitled to recover a loss of rental income for one-half of June 2009 in the amount of **\$476.50**.

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."

Section 21 of the Regulations to the Act states 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 inspection unless either the landlord or the tenant has a preponderance of evidence to the contrary. The only deficiencies noted on the move out inspection report by the Landlords is damage to a corner of a hallway and painting issues in two bedrooms. Consequently, the Tenants argued that the Landlords should not be entitled to recover amounts for other items not noted on the move out inspection report. The Landlords argued that many of the deficiencies not noted on the move out inspection report were simply overlooked at the time of the inspection and were only apparent upon comparing the videos of the rental unit inspections at the beginning and at the end of the tenancy.

The Landlords said it was a term of the Parties' tenancy agreement that no modifications would be made to the rental property without the Landlords' written consent. The Landlords claim, however, that the Tenants painted two bedrooms in a dark color without their knowledge or consent and in the process got paint on the ceiling, and painted window and door trim. The Landlords said the Tenants tried to paint over one of the bedrooms but the dark color still showed through. The Tenants argued that the color of one bedroom was not dark and that it would have been easy for the Landlords to paint over. The Tenants also argued that as the rental unit had not been painted by the Landlords since the beginning of the tenancy, the Landlords would have had to repaint in any event.

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RTB Policy Guideline #1 says that a Landlord is responsible for painting the interior of the rental unit at reasonable intervals. It also states that a tenant must pay for repairing walls where there are an excessive number of nail holes or where the Tenant has made changes not explicitly consented to by the Landlord. I find that the Tenants painted two bedrooms in dark colours without the consent of the Landlords. I also find that in trying to repaint one of those rooms, the Tenants got paint on the ceiling and trim. I further find, however, that after a tenancy of 7 years, the Landlords would probably need to repaint the rental unit in any event. Consequently, I find that the Landlords are entitled to recover one-third of the expenses for the extra work involved in covering the dark paint in these rooms and fixing the trim or **\$61.85**.

The Landlords also said there was drywall damage in one corner of the hallway and that there were an unreasonable number of holes in the walls which were not repaired properly by the Tenants. The Landlords argued that some of these walls had been painted at the beginning of the tenancy but others (that were in good shape) had not. While I would agree that there were an unreasonable number of holes in the walls, I also find that after a tenancy of 7 years the Landlords would be expected to re-paint the interior of the rental unit. I also find that there is no evidence that the holes were not filled properly. I do find, however, that the Landlords are entitled to be compensated for damage to a corner in the hallway and award them **\$20.00** for this repair.

The Landlords claimed that the Tenants removed 3 shelves from a storage room and did not replace them. The Tenants claimed that the shelves were rough boards and that they left them at the rental unit. In the circumstances, I find that there is insufficient evidence of damage or loss and this part of the Landlords' claim is dismissed.

The Landlords also claimed that the Tenants added a shelf in the laundry room without their consent. The Landlords argued that the shelf had to be removed because it interfered with access to valves. The Landlords also claimed that the Tenants left a number of holes in the wall. The Tenants argued that on the move out inspection, the Landlords claimed that they did not take issue with the shelf. I also note in the Landlords' video of the move out inspection that when one of the Landlords viewed the shelf, he said "that's fine." Consequently, I conclude that the Landlords waived this as damage to the rental unit and as a result, that part of their claim is also dismissed.

The Landlords said the Tenants removed 1x4 strips for a shelf from a bedroom closet and only left behind a rough 2x4 board which the Landlords had to cut, paint and install. I find that the Tenants did not return the bedroom closet to its original condition and as a result, the Landlords are entitled to **\$20.00** to restore it to its original condition.

The Landlords also said that the Tenants replaced 3 sets of custom made (metal) mini blinds and replaced them with plastic mini blinds. The Landlords claimed that one of the

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replacement blinds was not installed and had to be cut to fit properly. The Landlords admitted that the previous blinds were damaged but argued that they still worked. The Tenants also claimed that the blinds were not in good shape at the beginning of the tenancy and that they fell apart during the tenancy. The Tenants said that they told the Landlords they would leave the new blinds at the end of the tenancy and the Landlords were fine with that. I find that this matter was specifically addressed during the move out inspection but that the Landlords took no issue with the replacement blinds. For this reason and given also that the Tenants replaced the damaged blinds (albeit with inferior ones), I find that the Landlords are not entitled to compensation for this part of their claim and it is dismissed.

The Landlords claimed that the Tenants left screw anchors in the bathroom wall that left holes when removed. The Tenants claimed that the anchors (if removed properly) should not have left large holes but in any event the Landlords said they would be repainting. RTB Policy Guideline #1 (at p. 4) says that a Tenant is responsible for repairing walls where they have used screws and they have left wall damage. Consequently, I find that the Landlords are entitled to recover **\$20.00** for this repair.

The Landlords claimed that the Tenants changed a lock set on one of the bedroom doors without their consent. The Tenants claimed there was nothing wrong with the new lock set and that there was no reason for the Landlords to remove it. I find that this was a modification made by the Tenants without the Landlords' consent and as a result, I find that the Landlords are entitled to compensation of **\$10.00** for this repair. However, as the Landlords removed the Tenants' privacy lock set, I order the Landlords to return it to the Tenants' (at the Landlords' expense).

The Landlords said that the front door and weather stripping had scratches from the Tenants' cat. The Landlords admitted that the Tenants patched the door but claimed they did not sand it properly and repaint it. The Landlords also said that the Tenants did not replace the damaged weather stripping with the same kind that was damaged. The Landlords admitted that this matter was dealt with during the move out inspection but nothing is mentioned about it on the move out condition inspection report. Consequently, I conclude that the Landlords did not take issue with the door and weather stripping and for that reason, I find that the Landlords are not entitled to compensation for this part of their claim and it is dismissed.

The Landlords claimed that a toilet paper holder and circular wooden towel holder were missing at the end of the tenancy. The Tenants claimed that these items were very old and fell apart during the tenancy. The Landlords argued that the Tenants never mentioned anything about these items needing repair. Having regard to the age and worn condition of the vanity in one bathroom, I find that the toilet paper holder probably was old and suffering from wear and tear. Based on the video of the move in

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inspection, I also find that the towel ring was old and worn at the beginning of the tenancy. Consequently, I conclude that damages to these two items were more likely the result of reasonable wear and tear and as a result, the Landlords are not entitled to compensation for them.

The Landlords said there was writing on one of the walls (a growth chart) in the dining area. The Landlords argued that it would not have had to be repainted except for the damage. The Tenants argued that most of this was removed at the end of the tenancy and that the Landlords didn't say anything about it during the tenancy even though they were aware of it. I find that the Landlords are not entitled to compensation for this item as the Landlords admitted that it was dealt with during the move out inspection but was not listed as a deficiency on the condition inspection report. Furthermore, there is no other evidence of this alleged damage and as a result, this part of the Landlords' claim is dismissed.

The Landlords also said there were damages to 2 bedroom doors. The Landlords said one door was replaced at the beginning of the tenancy because it was dented and the other door was already in good condition. At the end of the tenancy, however, one door appeared to have nail or screw holes and the other had 6 dents in it. The Landlords admitted that this was brought up during the move out inspection but was not listed as a deficiency on the condition inspection report. The Tenants admitted to fastening something on the back of one door but denied damaging the other door or that the Landlords replaced a damaged door. Based on the move in inspection report, I find that the doors were in good condition at the beginning of the tenancy but had damages (that were not reasonable wear and tear) at the end of the tenancy. However, as the Landlords knew about these during the move out inspection and accepted their condition, I find that they cannot now seek compensation for those damages.

Similarly, the Landlords claimed that the Tenants damaged a bi-fold laundry room door. The Landlords also admitted that this matter was brought up during the move out inspection but that it was not noted as a deficiency on the condition inspection report. The Tenants claimed that the slats of the door started falling out approximately 1 year into the tenancy and that they advised the Landlords about it (which the Landlords denied). The Tenants argued that any damage was the result of wear and tear. I find that damages were likely the result of wear and tear but in any event, given that the Landlords were aware of this damage during the move out inspection and accepted the condition, I find that they cannot now seek compensation for it.

The Landlords said that six light bulbs and six bi-fold door knobs were missing at the end of the tenancy. The Landlords admitted that the missing light bulbs were brought up during the move out inspection. The Landlords claimed, however, that they overlooked the missing bi-fold door knobs during the move out inspection. Aside from

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the Landlords' allegation that the bi-fold door knobs were missing, I find that there is no other evidence to corroborate this claim and as a result, it is dismissed. I further find that because the Landlords were aware of the missing light bulbs during the move out inspection but did not list them as a deficiency on the move out report, I find that the Landlords did not consider it a deficiency when the report was signed and cannot now seek compensation for it.

The Landlords claimed that a light fixture in a storage room was damaged by the Tenants but they did not discover it until after the move out inspection. The Tenants said they had no knowledge if the light fixture in question was broken or not because they never used it during the tenancy. I find that there is nothing on the move in inspection report or video to indicate whether the storage room light was in good condition at the beginning of the tenancy. Furthermore, it is difficult to see the fixture in the move out inspection video due to the glare of the light. Consequently, I find that there is insufficient evidence to conclude that the Tenants damaged the light fixture and that part of the Landlords' claim is dismissed.

The Landlords also claimed that they only discovered holes in the back of a bathroom door after the move out inspection. The Landlords said the door was 7 years old and cannot be repaired. The Tenants argued that the holes were in the back of the door at the beginning of the tenancy. However, according to the move in condition inspection report the door was in good condition at the beginning of the tenancy. Consequently, I find that the Tenants are responsible for damages to this door. However, the Landlords provided no evidence of the value of door or the cost to repair it and as a result I award them **\$20.00** representing the diminished value of the door.

The Landlords said that the Tenants did not clean the oven, stove burner pans, range hood, kitchen walls and bath tub properly at the end of the tenancy. The Tenants claimed that everything was thoroughly cleaned at the end of the tenancy and argued that the burner pans were old and rusty at the beginning of the tenancy. Based on the move out inspection video and the move out condition inspection report, I find that the Landlords knew of the condition of all of these items on the move out inspection and accepted their condition. Consequently, I find that the Landlords cannot now seek compensation for cleaning.

As the Landlords have been successful on only 8 of their 23 claims for compensation, I find that this is not an appropriate case to order reimbursement of the filing fee and as a result that part of the Landlords' application is dismissed. I order the Landlords pursuant to s. 38(4) and 72 of the Act to keep **\$628.35** of the Tenants' security deposit award and to forward the balance owing to the Tenants as follows:

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Double security deposit	
Withheld by Landlords:	(\$600.60)
Accrued interest:	(\$15.86)
Filing fee:	<u>(\$50.00)</u>
Subtotal:	(\$666.46)
Less: Loss of rental income:	\$447.50
Painting:	\$61.85
Hallway wall repair:	\$20.00
Closet repair:	\$20.00
Bathroom wall repair:	\$20.00
Lock replacement:	\$10.00
Damaged bathroom door:	<u>\$20.00</u>
Subtotal:	<u>\$628.35</u>
Balance owing:	<u>\$38.11</u>

The balance owing is in addition to the amount of \$147.20 already paid by Landlords. Although the Tenants claimed they did not cash that cheque, there is no evidence that it is not negotiable. However, if the cheque is dishonoured or otherwise not negotiable, the Tenants may apply for a correction and amendment of the decision and monetary order on that ground.

Conclusion

A monetary order in the amount of **\$38.11** 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: December 07, 2009.

Dispute Resolution Officer

NOTE: This DECISION corrects and replaces the Decision issued on December 7, 2009.