

## **DECISION**

### Dispute Codes:

**MNDC, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages and 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Issue(s) to be Decided

Is the landlord entitled to monetary compensation in the sum of \$2,835.98 for damages to the rental unit?

May the landlord retain the deposit plus interest in partial satisfaction of the monetary claim?

Is the landlord entitled to filing fee costs?

### Preliminary Matter(s)

I have considered the testimony evidence in relation to the nature of this tenancy. The landlord submitted a copy of a residential tenancy agreement which currently indicates three tenants. This document also indicates three other names that have been previously deleted. The landlord utilized only one residential tenancy agreement, received deposits from previous tenants, added and deleted tenant names and returned those deposits when previous tenants vacated. As the tenants were all included on the same tenancy agreement I find that the tenants were co-tenants; however, the landlord has breached section 20(b) of the Act by accepting more than one deposit in respect to this tenancy.

### Background and Evidence

The tenancy commenced November 1, 2000 with tenant L.G. as one of the original tenants. In November 2007 the second female respondent became a tenant. The tenancy terminated in August 2009.

On October 12, 2000, a \$600.00 deposit was paid and on February 28, 2007 a further \$50.00 deposit was paid by one of the three respondents.

A move-in condition inspection was not completed and the landlord stated that the Residential Tenancy Act in effect at that time did not require an inspection. The tenants did not disagree that the home was in fair condition at the start of the tenancy.

The three tenants assigned one person to act as their agent for the purpose of completing a move-out inspection. On August 26, 2009 tenant J. S. met with the landlord at the rental unit. The tenant created a document outlining some costs that they would agree to have deducted from the deposits paid. During the inspection a dispute arose over painting of the rental unit and neither party signed the handwritten inspection report agreement, a copy of which was submitted as evidence.

The tenants agreed, at the landlord's request, to meet in order to complete another inspection with the landlord on August 29, 2009, however, their moving truck broke down and they could not attend.

The landlord is claiming the following compensation:

Carpet cleaning	60.00
Repair main floor closet door	50.00
Repair bedroom closet door	50.00
Repair kitchen closet door	50.00
Re-install front screen door	80.00
Repair back door lock	100.00
Purchase living room blind	68.99
Purchase bedroom curtain	46.99
Repair tiles in kitchen and hallway	500.00
Repair damaged wall	30.00
Repair damaged balcony	800.00
	2,835.98

During the hearing the tenants agreed that the cost of carpet cleaning and the living room blind may be deducted from the deposit.

The landlord purchased this now 38 year old home in 2000. The landlord's witness, the realtor who sold the house, testified that at the time of purchase the home was in fair condition, that it had been painted and that new floor tiles had been recently installed. The witness could not provide testimony as to the actual age of the carpets and agreed that the bi-fold doors were likely original.

During the tenancy the tenants painted the rental unit; the only time it was painted during this 9 year tenancy. The tenants testified that at the end of the tenancy they did

agree to repaint the unit but only if the landlord supplied the paint. The landlord denied she had agreed to provide the paint.

The landlord stated that the living room bi-fold door had been damaged; photographic evidence showed a small hole in the door. The tenants stated that this was caused when a previous occupant had moved out in 2007 and that this occupant had received their deposit back from the landlord. The landlord stated that the other doors were damaged as the springs were no longer functioning.

The tenants stated that a previous occupant had removed the screen door from the front entrance and that when she had moved the tenants stated that the screen door was not replaced. The tenants testified that the landlord returned all of the deposit paid by that occupant and did not insist that she re-install the door. The tenants testified that they were not responsible for the removal of this door and should not be made to pay for the installation.

The landlord is claiming costs for repair of the back screen door handle. The tenants stated that they do not recall how it broke; and that they did not abuse the door.

The tenants stated that the bedroom curtains are in a storage container underneath the rental unit staircase.

The landlord stated that the kitchen hallway tiles have been broken and scratched by the tenants and supplied photographs indicating damage to the tiles. The landlord submitted a copy of a list of repairs and damage documented by the current tenants. This list indicates that 35 tiles are scratched in the kitchen and that in the upstairs hallway three tiles are scratched and one broken. The landlord testified that the tenants allowed their three year old daughter to play on the tiles and that the tiles have been damaged due to banging or dropping of items on the tile. The landlord's witness stated that the tiles were newly installed in 2000.

The tenants testified that the tiles appear to have been installed over hardwood slats and that a sub-floor was not installed. The tenants stated that the surface of the tiles felt slightly uneven and that this lack of a solid sub-floor was the likely cause of damage that has been caused to the tiles.

The landlord stated there was damage to a wall. The tenants stated that the landlord saw this hole in 2007 and that she told them she would just place masking tape over it and then touch it up with paint. The tenants stated that a previous occupant had caused this damage but the landlord had returned his deposit, with no deduction made for the damage he caused.

The landlord testified that the tenants had placed planters on the balcony of the house and that this caused serious water damage to the deck surface. The landlord stated that she did see the planters on the deck of the balcony and did not ask the tenants to remove them as she was unaware that water damage might occur. The tenants testified that on two occasions during the tenancy the landlord resurfaced the balcony and that at no time did she direct them to permanently remove their planter from the balcony.

The landlord provided copies of receipts for the carpet cleaning and door handle repair and a processed cheque in the sum of \$100.00 for repair work. The remainder of the

costs claimed are based upon estimates the landlord obtained by calling professional services for quotes.

The landlord testified that the tenants should be ordered to pay at least the \$300.00 they offered on August 26, 2009.

The landlord is holding deposits plus interest in the sum of \$693.42.

### Analysis

I find that the landlord is entitled to the following compensation:

	Claimed	Agreed	Decided
Painting	1,000.00		0
Repair main floor closet door	50.00		0
Repair bedroom closet door	50.00		0
Repair kitchen closet door	50.00		0
Re-install front screen door	80.00		0
Repair back door lock	100.00		0
Purchase living room blind	68.99	68.99	
Purchase bedroom curtain	46.99		0
Repair tiles in kitchen and hallway	500.00		0
Repair damaged wall	30.00		0
Repair damaged balcony	800.00		0
	2,835.98	128.99	0

Section 32 of the Act requires tenants to repair damage to the rental unit if that damage is caused by the actions or neglect of the tenants. Tenants are not required to make repairs for reasonable wear and tear.

In relation to painting, I have accepted the tenant's testimony that they had agreed to repaint the rental unit if the landlord provided the paint. Residential Tenancy Branch Policy suggests that a landlord is required to paint a rental unit at reasonable intervals and that interior paint has a useful life of four years. Therefore, I find, in the absence of the landlord having made any expenditure for painting in a 9 year period that the landlord must assume the cost of repainting the rental unit. I find the tenants offer at the end of the tenancy to paint was more than reasonable, as the landlord had not been required to paint the walls of the rental unit during the term of the tenancy. I dismiss the claim for painting costs.

I dismiss the claim for bi-fold door repair as by the end of the tenant the doors were approximately 38 years old and any malfunction could reasonably be considered the result of normal wear and tear.

In relation to the door which has a hole, I find that the landlord returned the deposit to the tenant who caused this damage and failed to reach agreement that the deposit cover this damage. Even though the tenancy agreement indicates this was a co-tenancy, I find that the landlord's decision to accept deposits from each new tenant provided an expectation that she would ensure that damage caused by each co-tenant would be deducted from that tenant's deposit. Therefore, the claim for repair of the door with a hole is dismissed.

I find that the landlord failed to ensure that the previous tenant who removed the screen door accept liability for reinstallation of that door. As the landlord had accepted a deposit from that tenant it is reasonable to have expected that the landlord obtain agreement that this cost be assigned to the individual who removed the door. I find that the co-tenants are not responsible for this cost and dismiss this claim.

I find that the broken back door handle could be reasonably assumed the result of normal wear and tear. The landlord could not provide evidence of the age of this handle; therefore it is not unreasonable to expect that it is at least 38 years old. There is no evidence before me that the tenants neglected this door.

The tenants have testified that the bedroom curtains are in the rental unit; therefore the claim for the curtain is dismissed.

I find the tenants testimony in relation to the tile more convincing than that of the landlord and her witness. The landlord provided no professional report as to the reason for the damage that has occurred to the tiles. The landlord's witness testified that prior to the start of the tenancy the tiles had not seen any appreciable wear. It was only after the tenants lived in the unit for some time that the damage emerged. The tenant's testimony that the tile was installed on hardwood slats and not a properly installed sub-floor is more convincing than the landlord's testimony that a three year old child playing on the floor somehow caused this damage. Therefore, the claim for tile repair is dismissed.

The landlord did not deny that she had observed the hole in the wall made by a previous occupant in 2007. I find that the tenant's testimony that a previous tenant caused this damage and the landlord's subsequent failure to reach agreement that this would be deducted from that occupant's deposit, should not now fall to the remaining tenants. The landlord accepted multiple deposits from the other occupants, which I accept as indication that any damage caused by those occupants would be deducted from their deposits. Therefore, the claim for repair of the hole in the wall is dismissed.

The landlord testified that she did not anticipate that a planter on the balcony could cause water damage to the deck. I find that if the landlord did not believe damage could occur it is not reasonable to have expected the tenants to anticipate the possibility of damage. Further, I have no evidence before as to what caused the damage to the deck of the balcony. There is no evidence that the water damage was not caused by other sources of water and no professional report assessing the damage and the possible source of the water. Therefore, the claim for balcony damage is dismissed.

In relation to the landlord's expectation that the tenants attend a second move-out condition inspection, I find that this was unreasonable. The tenant had attended the first inspection and had taken the initiative to create a report which would have provided the landlord with reasonable compensation. I find the failure of the parties to reach agreement during the first inspection did not then provide the landlord with the right to expect the tenants attend a second inspection.

As I find that landlord is entitled to only a portion of the amount offered by the tenants during the move-out inspection, I dismiss the landlord's claim for filing fee costs.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$128.99, which is comprised of carpet cleaning and living room curtain costs. The balance of the landlord's claim for compensation is dismissed without leave to reapply.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$128.99, in satisfaction of the monetary claim and must forthwith return the balance of the deposit plus interest in the sum of \$564.43.

Based on these determinations I grant the tenants a monetary Order for the balance of **\$564.43**. In the event that the landlord does not comply with this Order, it may be served on the landlord, 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: December 31, 2009.

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Dispute Resolution Officer