



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 a monetary order for compensation for the loss of a wall unit, for carpet cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issues(s) to be Decided

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

Background and Evidence

This fixed term tenancy started on February 1, 2009 and was to expire on January 31, 2010, however it ended on July 31, 2009 when the Tenants moved out. Rent was \$1,150.00. The Tenants paid a security deposit of \$575.00 at the beginning of the tenancy.

The Landlord claims that the Tenants removed a wall unit that was secured to the living room wall at the end of the tenancy. The Landlord said that the wall unit was still in the rental unit on July 31, 2009 when a move out inspection was scheduled. The Landlord also said that the Tenants needed more time to move so they were told to leave the key in the rental unit with their forwarding address and the Landlord would pick it up the following day. The Landlord said the wall unit was missing the following day.

The Landlord also claimed that the Tenants did not clean the carpets at the end of the tenancy. The Parties agree that a carpet cleaner arrived when the Tenants were moving in but that it was not a convenient time so the Landlord advised the Tenants to have the carpets cleaned at a later date and the Landlord would reimburse them. The Tenants did not have the carpets cleaned during the tenancy. Furthermore, at some point during the tenancy, water flooded the rental unit and left spots on the living room and dining room carpets.

The Tenants argued that they should not be responsible for cleaning carpets when they were not cleaned at the beginning of the tenancy and when some of them were soiled by flood water. The Tenants also argued that they did not remove the wall unit and that it was still in the rental unit when they moved out. The Tenants claimed that the

Landlord told them to leave the rental unit door unlocked. The Tenants said they believed the Landlord did not have a key to the rental unit. The Tenants said they also believed a contractor would be making repairs to the water damaged drywall when they moved out.

Analysis

RTB Policy Guideline #1 (Responsibility for Residential Premises) says at p. 2 that the Landlord is responsible for cleaning carpets at the beginning of the tenancy and during the tenancy if they are soiled due to factors that are not caused by the tenant. The Guideline further says that a tenant will only be expected to clean carpets following a tenancy of approximately a year unless the tenant has smoked or had pets inside the rental unit. Consequently, in the absence of any evidence that the Tenants smoked inside the rental unit or had pets, I find that there is no basis for ordering them to pay for carpet cleaning and that part of the Landlord's claim is dismissed.

The Tenants denied having taken the wall unit from the rental unit but claimed they were told by the Landlord to leave the key. The Tenants also claimed that the Landlord said to leave the door unlocked which the Tenants said they believed was because the Landlord did not have a key to the rental unit. The Landlord denied telling the Tenants to leave the rental unit unlocked and claimed that he did have a key to the rental unit. The Landlord also said that the rental unit was locked upon arriving at the rental unit on August 1, 2009. The Landlord also claimed that there was no sign of forced entry and no other damage. Consequently, the Landlord said he did not believe that anyone else had been in the rental unit from the time the Tenants left until the Landlord arrived the following day. The Landlord claimed that renovations were not started until after August 1, 2009.

I find that whether or not the Tenants themselves took the wall unit, they should be responsible for the cost of replacing it. In particular, I do not give a lot of weight to the Tenants' claim that the Landlord told them to leave the rental unit door unlocked after they moved out. I find that this was more likely an assumption made by the Tenants because they believed the Landlord did not have a key. I accept the Landlord's evidence that he did have another key to gain access to the rental unit and therefore had no reason to tell the Tenants to leave the rental unit door unlocked.

I find that the Tenants had a responsibility to return the rental unit to the Landlords in substantially the same condition as it was in at the beginning of the tenancy. However, I find that the wall unit was missing at the end of the tenancy either because the Tenants removed it or because they failed to lock the rental unit when they moved out. The Landlord provided an estimate for the replacement cost of the wall unit, the amount of which was not challenged by the Tenants. Consequently, I award the Landlord the



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

amount of \$1,678.94 for the wall unit that was removed from the rental unit. As the Landlord has been successful in this matter, she is also entitled to recover the \$50.00 filing fee for this proceeding.

Sections 23 and 35 of the Act require a landlord to complete a condition inspection report at the beginning and at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the Tenants moved in and when they moved out, I find the Landlord contravened the Act. Consequently, s. 24 and s. 36 of the Act say 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 the Tenants' security deposit in partial payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

Wall Unit:	\$1,678.94
Filing fee:	<u>\$50.00</u>
Subtotal:	\$1,728.94
Less: Security deposit:	<u>(\$575.00)</u>
Balance owing:	\$1,153.94

Conclusion

A monetary order in the amount of **\$1,153.94** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, 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: January 05, 2010.

Dispute Resolution Officer