



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for the return of their security deposit as well as for compensation for the loss of articles from the rental unit and to recover the filing fee for this proceeding. The Landlord applied for compensation for cleaning expenses and repairs, to recover the filing fee for the proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

This matter was originally scheduled for hearing on December 7, 2009, however on that date the Landlord claimed that she had not received the Tenants' hearing package. The Tenants also claimed that they had not received photographs that the Landlord submitted as evidence to the Residential Tenancy Branch although the Landlord claimed she had served them. Both parties' applications were reconvened to today's date at which time the Landlord confirmed receipt of the Tenants' hearing package and the Tenants confirmed receipt of the Landlord's photographs. The Tenants also provided Canada Post registered mail receipts that show that the Landlord was previously served with their hearing package at the address for service indicated on the Landlord's application.

Issues(s) to be Decided

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

Background and Evidence

This tenancy started on December 1, 2007 and ended on July 31, 2009 when the Tenants moved out. The Tenants paid a security deposit of \$470.00 at the beginning of the tenancy.

The Parties participated in a condition inspection of the rental unit when the Tenants moved in and when they moved out. The Landlord claimed that at the end of the tenancy the Tenants did not clean the floor under the refrigerator and stove and did not clean under the stove top. The Landlord also claimed that the bathroom mirror, lights and counter top, as well as the bedroom blinds and the kitchen counter needed to be re-cleaned and that the outside bedroom windows and glass patio door needed to be

cleaned. The Landlord further claimed that a kitchen drawer and a bedroom window handle were broken. The Landlord provided photographs of some of these items which she said she took on July 31, 2009 during the move out inspection.

The Tenants denied that the Landlord took photographs during the move out inspection and claimed that the first they knew of them was when they received them in the Landlord's evidence package. The Tenants admitted that there was dirt behind the refrigerator and stove but argued that they were very difficult to move and had to be moved during the inspection by the Landlord's maintenance person. The Tenants denied that the Landlord gave them cleaning instructions as she alleged and further claimed that they were unaware that the stove top could be pulled apart so that the underside could be inspected.

The Tenants said that the rental unit was reasonably clean at the end of the tenancy but that the Landlord was picky in pointing out such things as dust on blinds and so forth. The Tenants claimed that a kitchen drawer started falling apart during the tenancy and that the Landlord's maintenance person was supposed to repair it but never did. The Tenants denied breaking a bedroom window handle.

The Tenants claimed that they moved all of their belongings except a bedroom mirror, glass bathroom scale and some other fragile items from the rental unit late in the evening on July 27, 2009. The Tenants said that when they returned to the rental unit on July 28, 2009 to do cleaning, the mirror and scale were missing. The Tenants said the Landlord denied removing these items but at the same time repeatedly said that they needed to clean up the rental unit because it was dirty. Consequently, the Tenants said they assumed that the Landlord had entered the rental unit without their consent and removed the items or allowed someone into the rental unit who took the items.

The Tenants said that when they arrived at the rental unit on July 30, 2009, the Landlord had already told the maintenance person to go into the rental unit to fill nail holes in the wall without notifying them. The Tenants said they contacted the Landlord about this and she told them that she had entered the rental unit several times and that it didn't matter because the Tenants had moved out. The Tenants argued that they were entitled to exclusive possession of the rental unit until July 31, 2009 and that the Landlord was not entitled to enter without their consent. The Tenants also said that when they arrived at the rental unit on July 31, 2009 to do the move out inspection, the Landlord already had a painter there.

The Landlord claimed that when the Tenants gave their notice on June 21, 2009, they gave her verbal permission to enter the rental unit at any time to make repairs in anticipation of a new tenant (which the Tenants denied).

Analysis

The Landlord's Claim:

Section 37 of the Act says that at the end of a tenancy, the Tenants must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 (Responsibility for Residential Premises) also outlines more specifically what the responsibilities of a Landlord and Tenant are in regard to cleaning and repairing a rental unit.

In particular, RTB Policy Guideline #1 at p. 3 says that a Landlord is responsible for cleaning exterior windows while a tenant is responsible for cleaning the inside and outside of balcony doors at the end of a tenancy. The same Guideline says at p. 3 that a Tenant is responsible for cleaning the stove top and oven as well as cleaning under the refrigerator and stove but only if they are on rollers and can be easily moved.

The Landlord claimed that the refrigerator and stove were on rollers however the Tenants denied this and said those appliances could only be pulled out with the assistance of the maintenance person. The photographs of these appliances provided by the Landlord do not show any rollers and in the absence of any other corroborating evidence, I find that there is insufficient evidence to conclude that the appliances were on rollers. Consequently, I find that the Landlord is not entitled to recover cleaning expenses from the Tenants for cleaning behind the stove and refrigerator or for cleaning under the stove top.

With respect to the balance of the Landlord's claim for cleaning expenses, I note that on the move out condition inspection report (which the Tenants did not sign), the Landlord has noted the cleanliness issue as being "dust." In the circumstances, I am not satisfied that re-cleaning was necessary and find instead that the rental unit was reasonably clean at the end of the tenancy. Consequently, the Landlord's claim for cleaning expenses is dismissed.

I also note that the move out inspection report says nothing about a broken bedroom window handle. The Landlord relied on her photographs as evidence of this however I find that the photographs are unreliable as I am not convinced that they were taken during the move out inspection as the Landlord claimed. Furthermore, I find that the kitchen drawer likely was starting to fall apart during the tenancy and therefore conclude that this damage was likely the result of reasonable wear and tear rather than due to an act or the neglect of the Tenants. Consequently, the Landlord's claim for repair expenses is dismissed as is her claim to keep the security deposit and to recover the filing fee for this proceeding.

The Tenants' Claim:

The Tenants claimed that given the Landlord's practice of entering their rental unit and granting others access without their consent at the end of the tenancy, it is likely that she or an agent of hers removed the bedroom mirror and bathroom scale. The Tenants claimed that no one else had keys to access the rental unit and that they were the last persons to leave and lock up the rental unit on July 27, 2009. The Tenants also provided a written statement from their mover who claimed that the items in question were not removed by him from the rental unit on July 27, 2009.

The Landlord admitted that she was the only one who had access to a rental unit key which was kept in a box in the office. The Landlord said she was unaware that the Tenants had moved out until they contacted her on July 28, 2009 about the missing items. The Landlord denied that she entered the rental unit and took the items in question. The Landlord argued that the movers could have broken the fragile items without informing the Tenants.

The Tenants argued that the Landlord's evidence should not be considered credible given that she had been dishonest about receiving a copy of the Tenants' hearing package on December 7, 2009 and sending copies of photographs (which they claim they only received prior to the reconvened hearing date) as well as other evidence.

I find on a balance of probabilities that the Tenants' articles probably were in the rental unit when they left and locked up on the evening of July 27, 2009. I also find it unreasonable that the Tenants would have given the Landlord authorization to enter their rental unit whenever she wanted to make repairs to it and accordingly I accept the Tenants' evidence that they did not. I also accept the Tenants' evidence that the Landlord did enter the rental unit a number of times in the last days of the tenancy because she believed that the Tenants had moved out, that she was entitled to do so and that she was anxious to get it ready for new tenants moving in on August 1st.

Furthermore, where the evidence of the Parties differs on this issue, I prefer the evidence of the Tenants as I did not find the Landlord's evidence to be reliable. In particular, I find that the Landlord's evidence about not receiving the Tenants' hearing package was untrue given that the Tenants provided proof of service showing that she had been served with it at her address for service. I also found the Landlord's evidence at the hearing to be inconsistent; for example, she initially gave evidence that she told the Tenants that their rental unit was unclean on July 28th because of a monthly inspection she had done in July but later changed that evidence and said the inspection took place in mid-June.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

The Landlord also said she gave the Tenants an instruction sheet for cleaning on June 12, 2009 when they gave their notice but later said she did this at the end of June when she did a monthly inspection.

As a result, I find on a balance of probabilities that the Landlord or an agent of hers likely did enter the rental unit sometime between July 27, 2009 and July 28, 2009 without notice to the Tenants and without their consent and removed the Tenants' bathroom scale and bedroom mirror. Consequently I find that the Landlord is responsible for compensating the Tenants for these articles and have made out a total claim as follows:

Security deposit:	\$470.00
Accrued interest:	\$7.66
Mirror & Scale:	\$69.99
Filing fee:	<u>\$50.00</u>
Total:	\$597.65

Conclusion

The Landlord's application is dismissed. A monetary order in the amount of **\$597.65** 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: January 18, 2010.

Dispute Resolution Officer