

## **DECISION**

### **Dispute Codes**

Landlords' Application: MND, MNSD, FF

Tenants' Application: MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlords and the tenants. The landlords have applied for a monetary order for damage to the unit, site or property, to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenants for the cost of this application.

The tenants have applied for double the amount of the security deposit and pet damage deposit, and to recover the filing fee from the landlords for the cost of this application.

One party appeared for the landlords, and one party appeared for the tenants. Both parties gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

### **Issues(s) to be Decided**

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Are the landlords entitled to retain the security deposit or pet damage deposit in partial satisfaction of their claim?

Are the tenants entitled to double return of the security deposit or pet damage deposit?

### **Background and Evidence**

This month-to-month tenancy began on November 15, 2008 and ended on February 28, 2010. Rent in the amount of \$1,450.00 was payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears.

At the outset of the tenancy, the landlords collected a security deposit from the tenants in the amount of \$725.00 as well as a pet damage deposit in the amount of \$250.00.

The landlord testified that a move-in condition inspection report was completed, and at that time the tenants were provided with a checklist for clean-up for when the tenants vacated the unit. This evidence is not disputed by the tenant and a copy of that checklist was provided in advance of the hearing. The parties also agree that all 4 parties were present when the move-out condition inspection was done, but the results of that inspection were done on "scratch paper." The landlord testified that the first condition inspection report was used but the results would not entirely fit so additional paper was used.

The tenant testified that his wife left the keys and a note with the forwarding address of the tenants on a shelf in the house during the move-out inspection which was acknowledged by the landlords at the time. The landlord acknowledges receiving the keys and recalls a discussion with the tenant about returning the security deposit within 15 days, but he thought he had 30 days to return it and told the tenant he would look into it.

The landlords' claim is for the following costs for damages:

- 3 hours @ \$45.00 per hour for labour raking & cleaning, picking weeds & leaves up in the front yard;
- 2 hours @ \$45.00 per hour for labour for scrubbing oil stains off the driveway, plus \$10.00 in materials;
- 1.5 hours @ \$45.00 per hour for peeling and reapplying wallpaper in the bathroom;
- 7 hours from landscaper cleaning, raking, etc. in the backyard, in the amount of \$383.00;
- 3.5 hours @ \$45.00 per hour for installation, removal, ordering & measuring new window, plus \$50.00 for materials;
- Cost of a new window \$49.52;

- ½ hour @ \$45.00 per hour for screen door repair, fill, sand and paint, plus \$19.99 for materials;
- 1.5 hours @ \$45.00 per hour to sand, fill, prime (2 coats) and paint, plus \$2.97 for materials;
- ½ hour @ \$45.00 per hour to fill, sand and paint a hole in drywall, plus \$3.49 in materials;
- ½ hour @ \$45.00 per hour for sanding and painting;
- \$13.99 for the cost of a new smoke detector;
- Carpet cleaning costs at \$223.89;
- Window cleaning costs at \$100.00;
- Interior cleaning costs at \$1,350.00 (and a breakdown of hours spent was also provided);
- Cost of a memory card to take pictures of damages at \$14.96;
- Cost of batteries for camera to take pictures of damages at \$5.27
- ½ hour @ \$45.00 per hour to repair damage to the stairwell, plus \$19.99 for materials.

Both parties provided photographs of the vacant unit in advance of the hearing.

The tenant testified that the window in the master bedroom was broken when they moved in, but the window is up high on the wall and the curtains were closed when they did the initial inspection, so it was not noticed. The photographs corroborate that evidence.

The tenant also testified that a chip in the stairwell wood was caused during the tenancy, however the landlord told him how to fix it, but the wall wasn't straight and the wood didn't fit. The result was the landlord repairing it and then had to stain the raw end.

The tenant testified that the landlord told him not to return after midnight on February 28, 2010 so he did not scrub the oil stains on the driveway.

### **Analysis**

Firstly, dealing with the tenants' application for double the return of the security deposit, I refer to Section 38 of the *Residential Tenancy Act* which states that the landlord must return the deposits and interest within 15 days of receiving the forwarding address of the tenants in writing or within 15 days of the end of the tenancy, whichever last occurs, or apply for dispute resolution requesting an order to retain the deposits within that time. I find that the tenants did leave a forwarding address in writing on February 28, 2010, and the landlord did not make an application for dispute resolution claiming against those deposits until March 23, 2010, well after the 15 day period had expired. Therefore, I must award to the tenants double the security deposit and pet damage deposit, for a total award of \$1,950.00.

I also have to take into consideration that the *Act* requires that the tenants leave the rental unit in a state of reasonable health and cleanliness. It may very well be that the landlords want the rental unit to be in pristine condition for showing to prospective tenants or purchasers, but that pristine condition is not the responsibility of the tenants. I have examined the document entitled "Breakdown of Clean up" provided by the landlords, and I also refer to The Residential Tenancy Policy Guideline #1 Landlord & Tenant – Responsibility for Residential Premises. That document states that, "The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act." It is up to me to determine whether or not the condition of the premises meets that standard, which may not be the standards of the landlords.

Further, the burden of proving a damage claim lies on the party claiming damages, and that proof must pass the 4 part test for damages:

1. That the damage exists;
2. That the damage exists due to a breach of the tenancy agreement or the *Act*;
3. The amount;
4. What was done to mitigate or reduce the damage by the claiming party.

I have reviewed the photographs provided by both parties as well as the condition inspection reports. The tenants have provided a copy of the additional paper used to list the condition of the unit on February 28, 2010, but it is very difficult to read and has notations on it that I cannot determine whether they were written by the landlords or the tenants, or when. I find it difficult from this evidence to decipher what was the responsibility of the tenants and what may have been neglected by the tenants at move-out. For example, the photographs provided by the tenants of the dishwasher show a clean appliance, yet the inspection report shows that it was dirty. I see no evidence of that.

I find that the landlords' claim for their own labour at \$45.00 per hour is excessive.

I find that the tenants did not clean the carpets before vacating the unit, and the landlord has provided a receipt in the amount of \$223.89, and that is generally required by the tenants if the tenants resided in the unit for one year or more, which in this case, does apply.

The landlords have also provided a receipt for window cleaning in the amount of \$100.00 but that does not provide evidence of whether that was inside or outside. The Residential Tenancy Policy Guideline provides that the tenants are responsible for cleaning the inside windows, tracks and the inside and outside of balcony doors, windows and tracks. The landlord is responsible for cleaning the outside of the windows, at reasonable intervals. I would therefore order that the tenants reimburse the landlord ½ of the amount paid, or \$50.00.

The tenant did admit that the smoke detector was tenant's error or negligence, and for that I award the landlords \$13.99.

The tenant also admitted to the oil stains in the driveway, and the landlord has produced a receipt in the amount of \$9.57. The landlord testified that it took him 2 hours to do such cleaning, and I would award \$40.00 for his time.

The tenant is generally responsible for routine yard maintenance, which includes cutting grass, and weeding flower beds if the tenancy agreement requires it. The only portion of the tenancy agreement that I have been provided with is the addendum which deals only with a pet. Therefore, the landlord has failed to prove the claim for yard maintenance. I do accept the evidence of the landlord however that some yard cleaning was required, in that the tenant did not dispute some dog feces left in the yard, and for that I award \$20.00 in favour of the landlords.

I further find that the ripped wallpaper in the bathroom is normal wear and tear and decline to make any order against the tenants for that.

I would also allow ½ hour @ \$20.00 per hour for screen door repair, fill, sand and paint, plus \$19.99 for materials.

I find that the tenants had an obligation, or certainly ought to have notified the landlords in writing once they found that the window in the master bedroom was broken, and therefore, the only evidence I have before me does prove the landlords' claim and that I order the landlords be reimbursed \$49.52 for supplies and \$70.00 for labor for the repairs.

I find that the landlords have proven the claim with respect to some painting, however the receipts provided amount to \$6.46. The landlord has testified that the painting done took 2 ½ hours. For that I award in favour of the landlords the amount of \$56.46.

I also award to the landlord \$19.99 for repair to the damaged stairwell and \$10.00 for the time spent on the repairs by the landlord.

I decline to award anything for the memory card or batteries for a camera to prepare for this hearing.

### **Conclusion**

For the reasons set out above, I hereby order that the landlords pay to the tenants the sum of \$1,950.00, and I order that the tenants pay to the landlords the sum of \$593.41. I further order that the amounts be offset from one another, and I order that the landlords pay to the tenants the sum of \$1,356.59.

Since both parties have been partially successful in their claims, I decline to order that either party recover the filing fee from the other party.

This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: June 02, 2010.

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Dispute Resolution Officer