



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses and to keep the Tenants' security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Landlords entitled to keep all or part of the Tenants' security deposit?

Background and Evidence

This tenancy started on February 15, 2006 and ended on May 31, 2010 when the Tenants moved out. Rent was \$1,350.00 per month. The Tenants paid a security deposit of \$675.00 at the beginning of the tenancy. The Parties agree that a condition inspection report was completed at the beginning of the tenancy but not at the end of the tenancy.

The Landlords claim that at the end of the tenancy, the Tenants left the rental unit in need of cleaning, repairs and painting. In particular, the Landlords said the Tenants did not take adequate steps to ventilate the rental unit during the tenancy which resulted in a build up of excessive moisture and mould growth on windows, baseboards and the bathroom ceiling. The Landlords also said the Tenants kept a fish tank which they believed contributed to the additional moisture. The Landlords admitted that there was a condensation issue with the single pane windows, but argued that it was manageable with proper ventilation. The Landlord claimed that their current tenant has no issues with mould.

The Landlords said the rental unit was newly painted at the beginning of the tenancy and argued that if it wasn't for the Tenants putting plaster over nail holes on the walls without sanding or repaint them, the unit would not have had to be repainted. The Landlords admitted that although the walls of the stairwell and landing areas were not damaged, they were repainted to "freshen them up."

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The Tenants argued that there were problems with mould in the rental unit throughout the tenancy and they first brought this to the Landlords' attention in March of 2008 and then again in January of 2009. The Tenants said the Landlords refused to change the windows and instead brought them a dehumidifier which they used for long periods of time. The Tenants also claimed that they installed window stoppers so that they could ventilate the rental unit. The Tenants denied that their fish tank contributed to any significant additional moisture in the rental unit as they claimed they had it since 1998 and that it was not an issue in previous suites in which they had resided.

The Tenants argued that the rental property as a whole had issues with walls leaking and condensation on windows. The Tenants claimed that their neighbours also reported to them that they had problems with mould, leaks in the ceiling and "soft walls" from other water leaks. The Tenants said they also spoke with the current tenant of the rental unit approximately 10 days ago when they went to pick up their mail and that tenant also claimed that they were having issues with excessive moisture and mould. The Tenants said that throughout the tenancy they regularly removed excessive moisture from the window areas and cleaned mouldy areas with Killex but the mould kept returning. The Tenants said they also applied a mould inhibitor to the bathroom ceiling and repainted it during the tenancy.

The Tenants said that they did more than they needed to in order to repair the walls which only had small nail holes. In particular, the Tenants claimed that the Landlords planned to paint the rental unit in any event to suit their new tenant who wanted some walls painted a different (or neutral) color. The Tenants also said that the Landlords had a contractor inspect the rental unit prior to the end of the tenancy which further led them to believe that they intended to repaint. The Tenants also claimed that they asked one of the Landlords during a showing to a prospective tenant if she would be looking to keep amounts from their security deposit to re-paint a mould-stained bathroom ceiling but she did not say anything (which the other Landlord denied). The Tenants argued that the same Landlord did an inspection of the rental unit with them on June 1, 2010 and said nothing about the condition of the walls or the overall cleanliness of the rental unit and as a result, they believed she was satisfied with the condition. It was not until approximately 10 days later that they received a letter from the Landlords advising them that they were seeking costs to repair the alleged deficiencies.

The Tenants also argued that the cleaning and repair expenses claimed by the Landlords were excessive. In particular, the Tenants said the invoice for painting provided by the Landlords did not state the square footage that had been painted or the rate per square foot. The Tenants suggested that a reasonable amount would have been approximately \$180.00 to repaint the rental unit. The Tenants also argued that 15 hours of cleaning by the Landlords was excessive.

Analysis

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.”

RTB Policy Guideline #1 also states at p. 4 that “if a tenant follows the Landlord’s reasonable instructions for hanging and removing pictures and so forth, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.” However, a tenant “must pay for repairing walls where there are an excessive number of nail holes or large nail holes, or screws or tape have been used and left wall damage. The Guideline further states that “the landlord is responsible for painting the interior of the rental unit at reasonable intervals.”

The Tenants argued that they made only few, small nail holes in the walls to hang pictures. The Tenants said that there were already large holes in the bedroom wall at the beginning of the tenancy from another occupant having mounted a television set. The Tenants also argued that the Landlords intended to re-paint the rental unit in any event which the Landlords denied. I find that the photographs provided by the Landlords largely substantiate the Tenants’ claims. In particular, I find that there are not an excessive number of nail holes but rather few, small holes in the walls that can be attributed to the Tenants. I also find that there is no evidence that the Landlords prohibited the Tenants from hanging pictures. Consequently, I find that the Tenants are not responsible for costs of sanding and repainting some walls and this part of the Landlords’ claim is dismissed without leave to reapply.

I also find that there is insufficient evidence to conclude that the Tenants should be responsible for the cost of repainting the bathroom ceiling. Although the Landlords argued that the mould growth was a result of the Tenants’ failure to properly ventilate the rental unit and having a fish tank, I find instead that there are a number of other factors that likely contributed to the mould. In particular, the Tenants claimed that other suites in the rental property have similar problems getting rid of excessive moisture that they claimed is caused by leaks in walls and ceilings and condensation around window areas due to single paned glass in the windows. Although the Landlords argued that the excessive moisture (and mould) issue was manageable with proper ventilation, the Tenants gave contradictory evidence and the Landlords provided no reliable corroborating evidence to substantiate it. Consequently, I find that there is insufficient evidence that this damage was caused by an act or neglect of the Tenants and as a result, this part of the Landlords’ application is dismissed without leave to reapply.

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The Landlords also sought to recover the cost of cleaning mould from window sills and baseboards. The Landlords claimed that they spent approximately one and a half hours cleaning each window sill for a total of 15 hours. The Tenants argued that the rental unit was clean at the end of the tenancy and that the Landlord said nothing about the condition of the window sills or baseboards during her inspection on June 1, 2010.

The Landlords did not complete a move out condition inspection report with the Tenants but instead relied on copies of photographs that they said they took after the tenancy ended as evidence of the condition of the rental unit at the end of the tenancy. The photographs show mould on some window sills and baseboards. However as the photographs were not taken at the time of the move out inspection with the Tenants present, they constitute hearsay evidence. Given also the Tenants' contradictory evidence that the window sills had been cleaned, I find that the Landlords' photographs are unreliable and I give them little weight.

Section 36 of the Act requires the Landlord to complete a move out inspection with the Tenants at the end of the tenancy and to document the condition of the rental unit on that day in a **written report**. If the Landlord has issues with the condition of the rental unit, then the Landlord must document those concerns in writing **at that time** on the move out report. Following the inspection with the Tenants on June 1, 2010, the Landlord (Y.M.) noted at the bottom of the Tenants' letter which set out their forwarding address, "have received all keys and checked premises." In the circumstances, I find that the Landlord (Y.M.) did accept the condition of the rental unit on that day as acceptable and as a result, it was improper for the Landlords to provide the Tenants with a written report they prepared 10 days later in the Tenants' absence with a claim for deficiencies. Consequently, the Landlords' claim for cleaning expenses is also dismissed without leave to reapply.

As the Landlords' claim has been dismissed in its entirety, I order pursuant to s. 38 of the Act that the Landlords return the Tenants' security deposit to them forthwith with accrued interest of \$23.59 for a total of **\$698.59**. I would also note that as the Landlords did not complete a move out inspection report as required by s. 35 of the Act, their right to hold the Tenants' security deposit for alleged damages to the rental unit was extinguished under s. 36 of the Act.

Conclusion

The Landlords' application is dismissed without leave to reapply. A Monetary Order in the amount of **\$698.59** 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



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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: October 26, 2010.

Dispute Resolution Officer