



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

Landlords: MND, MNSD, FF
Tenants: MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlords and the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords return the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The parties all attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. A witness also attended with the landlords. All information and testimony provided has been reviewed and is considered in this Decision.

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 in partial satisfaction of the claim?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to return of the security deposit?

Background and Evidence

This fixed term tenancy began on June 1, 2008 and ended on May 31, 2010. Rent in the amount of \$2,200.00 was originally agreed to, but the monthly rent was reduced to \$1,800.00 per month on December 1, 2009. The parties agree that rent was payable in advance on the 1st day of each month. On April 25, 2008 the landlords collected a security deposit from the tenants in the amount of \$1,100.00.

The male landlord testified that the tenant left oil stains in the driveway. He stated there are 4 panels of concrete and all 4 panels were cleaned but the landlord is claiming $\frac{1}{4}$ of the cost, and requests a monetary order for \$165.00.

The landlord also testified that 2 doors in the rental unit were left damaged by the tenants. One was an oak door in the basement bedroom, and the other was a white metal door off the kitchen in the upper level of the rental unit. The cost of replacing the oak door is \$125.88 and the metal door \$227.61. A move-in condition inspection report was completed on May 30, 2008, a copy of which was provided in advance of the hearing. That report is signed by the parties and shows that all of the 4 bedroom doors were in "good" condition at move-in, but contains no mention of the parking area or driveway.

A move-out condition inspection report was also completed, but in the absence of the tenants. A copy of that report was provided in advance of the hearing, and it shows a move-out date of May 31, 2010 and a move-out inspection date of June 2, 2010.

The move-in condition inspection report has no markings at all beside "Front and Rear Entrances" but the move-out condition inspection report shows "rear door damaged" beside "Front and Rear Entrances."

When questioned why the driveway was not addressed at move-out when the parties did a walk-through of the unit, the landlord's witness, who was the property manager, testified that it was not her final say. The landlord was questioned about signing a new lease, and why he would do so if he was concerned about oil spills in the driveway, and

he responded that the landlords were out of the country and had asked the property manager to inspect it 3 times over 2 years.

The male tenant testified that there was a leak in their vehicle, but they cleaned it up right away using kitty litter and thoroughly cleaning it. Further, there were no warnings or complaints from the landlord or the strata. He further stated that he has retained all emails and none say anything about oil stains. He stated that there was always some discolour, but the driveway looked good. Further, if there was a legitimate concern, the rent would not have been reduced and the lease would not have been renewed.

He further testified that there was a little damage done to the oak door on moving in. Also, there were dozens of items fixed during the tenancy, such as damaged tile, faulty switch on the lights, which were fixed by the owner but were not mentioned on the move-in inspection. With respect to the metal door, the female tenant stated that the door is several years old and during the tenancy, she cleaned the door which possibly made previous dents and chips more visible.

Analysis

Firstly, the *Residential Tenancy Act* states that if the landlord fails to provide the tenant with at least 2 opportunities to conduct the move-out condition inspection report, the landlord's right to claim against the security deposit for damages is extinguished. I find that the landlord's right to claim against the security deposit is therefore extinguished.

Completing the condition inspection report without the tenants present is also particularly problematic in that it prevents the tenants from having useful conversations with the landlords about concerns. Further, the move-out condition inspection is meant to provide the tenants with an opportunity to correct any situations that may concern the landlords in order to protect the security deposit held in trust by the landlords.

In order to be successful in a claim for damages, the onus is on the claiming party to prove that:

1. The damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount or cost of the damage or loss;
4. What steps the claiming party made to mitigate the loss or damage.

I find that the landlords did not comply with the *Act*, and their failure to do so has not advanced their claim for damages. The absence of the move-out condition inspection report does not show that element 2 has been satisfied.

I further find that the absence of any mention of the driveway in the move-in condition inspection report does not provide evidence that the tenant is responsible for oil stains in the driveway. Further, the landlords did not contact the tenant during the tenancy about oil stains. Therefore, the landlords' claim with respect to oil stains in the driveway is hereby dismissed without leave to reapply.

With respect to the metal door, I accept the evidence of the tenant that it was cleaned after the tenants moved in and then showed dents and/or scratches. Further, the door was not mentioned at all on the move-in condition inspection report, and therefore, the landlord's application with respect to the metal door is hereby dismissed without leave to reapply.

With respect to the oak door, the tenant admitted that some damage was done to the door while moving into the unit. Further, the condition inspection report completed when the tenants moved in shows that the door was in "good" condition. I further accept the evidence of the landlord with respect to the cost, but the landlord did not provide a receipt to show whether or not that cost included PST or GST, and I therefore decline to award taxes that are no longer collectable.

Conclusion

For the reasons set out above, the landlords' application for an order permitting the landlord to retain the security deposit is extinguished, and must be dismissed.

I find that the landlord has established a claim for \$125.88.

The tenants' application for return of the security deposit of \$1,100.00 plus interest in the amount of \$11.32 to the date of the hearing is hereby allowed.

Since both parties have been partially successful in their applications, I decline to order that either party recover the filing fee for the cost of this application.

Pursuant to my authority under Section 72 (2) of the *Residential Tenancy Act*, I hereby order that the awards be offset from one another, and I hereby grant a monetary order in favour of the tenants in the amount of \$985.44. 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: December 01, 2010.

Dispute Resolution Officer