



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, MND, MNDC, MNSD, FF
MND, MNSD, FF, O

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, a loss of rental income, for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's failure to return it within the time limits required under the Act.

At the beginning of the hearing, the Tenants claimed that they had not received the Landlord's evidence package that the Landlord referred to in the Details portion of his Application for Dispute Resolution. The Landlord claimed that he had sent the Tenants his evidence (which included photographs taken at the end of the tenancy of the damages to the rental unit) with his Application and Notice of Hearing. The Landlord's witness (who is his spouse) gave a detailed explanation as to the steps she took to prepare the evidence package on behalf of the Landlord and as well as the steps she took to ensure that evidence was included in with the Tenants' hearing package. The Tenants admitted that they received the Landlord's hearing package approximately 4 months ago and noticed that it stated there was an attached evidence package but could not say why they said nothing about it missing to the Residential Tenancy Branch or the Landlord until the hearing of this matter. On this issue, I find the Landlord's evidence more credible and conclude that the Tenants were served with the Landlord's evidence package.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
2. Is the Landlord entitled to compensation for a loss of rental income and if so, how much?
3. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

This tenancy started on November 1, 2008 and ended on May 12, 2010 when the Tenants moved out. Rent was \$750.00 per month which included utilities (however



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\$50.00 was for the use of laundry facilities). The Tenants paid a security deposit of \$375.00 at the beginning of the tenancy.

The Landlord's Claim:

The Parties completed a move in condition inspection report at the beginning of the tenancy and the Tenants signed it acknowledging that the rental unit was in good condition and had many new renovations and appliances. The Landlord said the Tenants returned to the rental unit on May 22nd to return the key and asked his spouse to do a move out inspection however she asked them to contact the Landlord to arrange another time. The Landlord said he tried to contact the Tenants many times after that date to arrange another time and the Tenants agreed to meet on June 4, 2010 to do a move out inspection report but later advised him that they could not make it and refused to participate. The Tenants claim that they made an appointment with the Landlord's spouse to do a move out inspection on May 22, 2010 but admitted that she did not appear to know anything about it when they arrived. The Tenants said they walked around the rental unit with the Landlord's spouse on May 22, 2010 and she said she would do an inspection with the Landlord and would contact the Tenants.

The Landlord said that at the end of the tenancy, he found that the Tenants had drilled 2 small holes in the shower stall that went through the tiles and drywall and which allowed water to seep into and saturate the drywall and insulation. The Landlord said he had to have the damaged section of the shower removed and repaired. The Tenants said they were unaware of any holes drilled in the shower. The Tenants claimed that the toilet in the bathroom had excessive condensation on it and suggested that it may have saturated the drywall next to the shower doors. The Tenants said they brought the toilet issue to the Landlord's attention during the tenancy but he failed to repair it.

The Landlord said that the Tenants damaged the back door frame which had large cracks in both the door and the frame at the end of the tenancy. The Landlord also said that the Tenants damaged the living room and kitchen ceilings by using a sticky substance to hang decorations. The Landlord said this substance left marks on the ceiling when it was removed. The Tenants admitted that they may have scratched the door with a sofa but denied causing any cracks to the door or its frame and denied using any sticky substance on the ceiling.

The Landlord said one of the Tenants damaged his fence by shooting a gun at it. The Tenant (I.E.) admitted that he had shot at a target mounted on the fence but claimed that this was with the consent and participation of the Landlord and his children.

The Landlord said that under the terms of the tenancy agreement, the Tenants were not permitted to have any additional occupants, however they moved in an extra person at

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the beginning of the tenancy and as a result he sought to recover additional rent of \$50.00 per month for 18 months. The Landlord said he confronted the Tenants about this person residing there but they denied it and told him she was just a babysitter. The Landlord also sought to recover a loss of rental income for June and July 2010 as he claimed that due to the damages caused by the Tenant, he was unable to complete repairs and advertise the rental unit for availability until the end of July. The Landlord admitted that it took 3 weeks to make repairs to the rental unit but said they could not be started until approximately mid-June 2010. The Tenants admitted that they had an additional person residing with them but claimed that the Landlord knew about it the whole time and said nothing about it.

The Tenants' Claim:

The Parties agree that the Tenants sent their forwarding address to the Landlord on June 3, 2010 by text messaging. The Tenants said they did not give the Landlord their written authorization to keep the security deposit.

Analysis

The Landlord's Claim:

The Landlord has the burden of proof and must show (on a balance of probabilities) that Tenants are responsible for damages to the rental unit as a result an act or neglect on their part rather than reasonable wear and tear.

Section 35 of the Act says that a Landlord must complete a condition inspection report at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant within 15 days. Section 17 of the Regulations to the Act says that if a Tenant does not agree to attend the inspection, the Landlord must give the Tenant a written Notice called a Final Notice to Schedule a Condition Inspection and if the Tenant does not participate at that time, then the Landlord must complete the report in the Tenant's absence. The Landlord said that in a text message of June 3, 2010, the Tenants refused to schedule another inspection however the Tenant's message did not say that. Consequently, I find that the Landlord was required to serve the Tenants with a Final Notice to Schedule a move out Condition Inspection Report but failed to do so.

Instead of a move out inspection report, the Landlord provided photographs of the alleged damages that he said he took at the end of the tenancy. The Tenants also submitted some photos of areas of the rental unit where damages were alleged, however I find that they are of little assistance as they are very blurry and are taken from outside most of the room in question (including the bathroom). On the other hand,

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I find that the Landlord's photos are clear and show the details of the alleged damages from inside the room in question. The Landlord said he took these photographs on May 23, 2010, the day after the Tenants returned the key to the rental unit.

The Tenants denied causing all of the damages inside the rental unit. However, the move in condition inspection report shows that none of these damages existed at the beginning of the tenancy. With respect to the damages in the bathroom, I agree with the Landlord that it is unlikely that condensation from the toilet would have seeped through the drywall of the shower enclosure (over a foot away) and saturated the gyproc and insulation and find instead that the water damage more likely occurred as a result of the holes drilled into the shower enclosure in the same area of the damage. Although the Tenants denied drilling holes into the wall of the shower enclosure, I find on a balance of probabilities that they did as there was no evidence of pre-existing damage and no one else occupied the suite until October 2010. Furthermore, I find that the drywall and insulation would only have been saturated from a fairly long period of water seepage. Consequently, I find that the Tenants are responsible for the repairs to the bathroom shower area. The Landlord said the total amount for this repair was \$1,452.64 which includes \$700.00 for labour. However the Landlord did not provide any evidence to substantiate the amount he allegedly paid for labour and as a result, I find that he is only entitled to recover \$752.64 for this part of his claim.

Given also that there were no damages to the ceiling of the kitchen and the living room at the beginning of the tenancy, I also find that the Tenants were responsible for those damages however the Landlord claimed in his written submissions that he was not seeking compensation for the cost of these repairs (as well as for other specified damages) and as a result, this part of his claim is dismissed without leave to reapply.

With respect to the damages to the main entrance door, the Tenants argued that it was a common door that led to the main floor where the Landlord resided. The Landlord argued that the door was only for the use of the Tenants and was not used by the Landlord or his family which is indicated by one of the photographs. The Tenants admitted that they may have scratched the door when moving some furniture but denied causing cracks on the door or the frame. I find that there is no evidence of the door being damaged and insufficient evidence of the alleged cracks to the door frame as the photos of that area were taken after some repairs had been made. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also claimed that one of the Tenants was responsible for damaging a fence by shooting pellets at it. The Tenant argued that the Landlord could have been equally responsible for this damage because he mounted a target on the fence and shot at it. The photographs provided by the Landlord of this damage show three boards with a small area of indentations from pellets. In the circumstances, I find that there is

insufficient evidence that the Tenants caused this damage (which is not significant in any event) and this part of the Landlord's application is dismissed without leave to reapply.

The Landlord also sought to recover additional rent as he claimed the tenancy agreement only provided that the Tenants could not have any other occupants residing with them. The Tenants admitted that they had another person residing with them but argued that the Landlord was well aware of this and said nothing about it (which the Landlord denied). The tenancy agreement does not contain a term permitting the Landlord to charge additional rent in the event the Tenants had additional occupants because *additional occupants were specifically prohibited*. Although the Tenants argued that the Landlord was aware of the additional person, the Landlord claimed that the Tenants denied that this was the case throughout the tenancy when he confronted them about it and only admitted it at the hearing. Given that the Tenants breached this term of the tenancy agreement, I find that the Landlord is entitled to some compensation and I award him \$600.00 additional rent representing \$50.00 per month for one year.

Given that I have also found that the Tenants were responsible for damages to the bathroom, I find that the Landlord is entitled to a loss of rental income for the period of time that it would reasonably have taken to repair those damages. However, I find that there is little evidence that all of the repairs would have taken 2 months (which would be unreasonable amount of time to do them) and given further that the Landlord claimed that the repairs to the bathroom took 3 weeks, I find that the Landlord is only entitled to one month of lost rental income and I award him \$750.00 for that part of his claim. Consequently, I find that the Landlord has made out a total claim for \$2,102.64.

The Tenants' Claim:

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Sections 36(2) of the Act say that if a Landlord does not complete a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against the security deposit **for damages to the rental unit** is extinguished. In other words, the Landlord may still bring an application for compensation for damages however she may not offset those damages from the security deposit or pet damage deposit. The Tenants argued that because the Landlord did not complete a move out



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condition inspection report, he was not entitled to keep the security deposit for damages to the rental unit. The Tenants also argued that because the Landlord did not have a right to retain the security deposit and failed to return it within 15 days of receiving their forwarding address in writing, the Landlord must now pay double the amount of the security deposit.

Although the Landlord did not comply with s. 35 of the Act by giving the Tenants a Final Notice to Schedule a Condition Inspection and complete a move out condition inspection report, I also find that the Tenants did not comply with the Act by giving the Landlord their forwarding address in writing but rather did so electronically (or by text messaging) which does not satisfy the requirements of s. 38. Consequently, I find that the Tenants are only entitled to recover their original security deposit of \$375.00 plus accrued interest of \$0.94. I order the Landlord pursuant to s. 34(8) and s. 72 of the Act to keep the Tenants' security deposit and accrued interest in partial satisfaction of the unpaid rent and loss of rental income awards. The Landlord will receive a monetary order for the balance owing as follows:

Landlord's monetary award:	\$2,102.64
Less: Security deposit:	(\$375.00)
Accrued interest:	(\$0.94)
Balance Owing:	\$1,726.70

As the Parties' respective claims to recover the filing fees for this proceeding would be offsetting, I make no award in reimbursement of that part of their claims.

Conclusion

A Monetary Order in the amount of **\$1,726.70** 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: November 16, 2010.

Dispute Resolution Officer