



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for damage to the unit, site or property, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 11, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The female landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered

Issue(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 keep the tenants security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on March 01, 2009 and ended on February 28, 2011. The tenants paid a monthly rent in advance on the first of each month of \$775.00. The tenants paid a security deposit of \$350.00 on February 15, 2009.

The landlord testifies that the tenants attended a move in condition inspection but at the end of the tenancy the tenants refused to take part in the move out inspection and were given more than two opportunities to attend with the landlords. The landlord testifies that they tried on numerous occasions to contact the tenants and to make arrangements to view the unit. However she states the tenants kept making excuses to avoid the landlords viewing the unit. The landlord testifies that when they managed to speak to the tenants by telephone they got nothing but profanity and abuse from the tenants and were told to leave them alone. The landlord testifies that the tenants gave them their forwarding address by e-mail on February 28, 2011.

The landlord testifies they did the move out inspection in the tenant's absence and found damage to the rental unit. They found the tenants had ripped up a two year old carpet without permission and replaced it with cheap, scratched laminate flooring which does not match the hardwood flooring in the den. The landlord testifies the carpet in the bedroom has been ripped beyond repair by what appears to be rips caused by a pet. There are stains which appear to be rust on the bedroom closet carpet. All the carpet in the bedroom had to be replaced at a cost of \$750.00

The landlord testifies that the dishwasher handle was broken off; the patio blinds had to be replaced as they have been bent and damaged beyond repair, The tenants left a bed frame, mattress, a TV, a stereo and a vacuum at the buildings dumpsters which the landlords had to remove at a cost of \$155.00; The tenants changed the locks to the unit without permission and the landlords will incur a strata fine for this; the tenants painted the bathroom and den without permission and the landlords have had to repaint this to a neutral colour; the tenants left an oil spill in the parkade and the Strata Council is arranging for this

to be cleaned at the landlords expense; the tenants dumped the remains of their fish tank outside the window onto the patio this has had to be cleaned up and power washed by the Strata Council; the tenants also left fish tank blue rocks hidden behind the freezer; the tenants left an old water cooler which had to be removed to the dump and the unit had been left in an unclean condition which took three people, two days to clean. The landlord has provided photographs of the condition of the unit at the end of the tenancy.

The landlord states she only seeks an Order to keep the security deposit of \$350.00 and has not filed any additional amounts to cover the additional cost of repairs and cleaning.

Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords undisputed documentary evidence and affirmed testimony before me.

The landlord has testified that the tenants were given opportunity to attend a move out inspection with the landlord but were told not to contact them again and they refused to attend the inspection. The landlord has provided photographs of the damage to the unit which also show the condition the unit was left in.

Section 36 of the Act states: The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

Consequently, it is my decision that the tenants have extinguished their right to the security deposit as they did not attend the move out condition inspection despite opportunity to do so, and I HEREBY Order that the landlord may keep the security deposit of **\$350.00** pursuant to s. 38(4)(b) of the *Act*.

As the landlords have been successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords claim to keep part of the tenant's security deposit.

I ORDER the landlord to keep \$360.00 from the security deposit.

A Monetary Order in the amount of **\$50.00** for the filing fee has been issued to the landlords and a copy of it must be served on the tenants. If the amount of the order 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: June 29, 2011.

Residential Tenancy Branch