



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, FF
MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit plus compensation equal to the amount of that deposit due to the Landlords' alleged failure to return the security deposit as required by the Act as well as to recover the filing fee for this proceeding. The Landlords applied for a Monetary Order for unpaid utilities, for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Are there utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
3. Are the Tenants entitled to the return of a security deposit and if so, how much?

Background and Evidence

The Tenants say this month-to-month tenancy started on March 1, 2010 when they moved in. The Landlord (K.F.) says this tenancy started on February 24, 2010 when the Tenants signed a tenancy agreement, paid one month's rent and a security deposit and moved in. The Landlord said he was unable to locate the written tenancy agreement. The Tenants say rent was \$950.00 per month and that this amount included utilities. The Landlord (K.F.) says that utilities were not included in the Tenants' rent. The Tenants say rent was due in advance on the 1st day of each month. The Landlords say that rent was due in advance on the 24th day of each month. The Parties agree that except for the 1st month's rent, the Tenants paid rent on the 1st day of each month which was the same day the Landlord, K.F., collected it. The Parties also agree that the Tenants paid a security deposit of \$475.00 at the beginning of the tenancy.

The Tenants' Claim:

The Tenants say that on March 1, 2011 they gave the Landlord (K.F.) their written notice ending the tenancy together with their forwarding address in writing. K.F. says the Tenants gave him their written notice ending the tenancy on March 2, 2011 but

denied having ever received their forwarding address in writing. The Parties agree that the Tenants did not give the Landlords written authorization to keep their security deposit and the Landlords have not returned it.

The Landlords' Claim:

A. Unpaid Utilities: The Landlord, K.F., said that at the beginning of the tenancy the Tenants verbally agreed to pay 40% of the utilities for the rental property but failed to do so. K.F. said he gave the Tenants a list of the unpaid utilities together with the utility invoices in mid-February, 2011 but the Tenants returned that document to him with other calculations hand written on it. K.F. said he approached one of the Tenants at the end of February, 2011 about paying the utilities but he seemed unwilling to discuss the matter and K.F. did not pursue it. The Landlords claim that the Tenants share of utilities for the 10 month period, February 24, 2010 – December 23, 2010, is \$806.41.

The Tenants denied that they agreed to pay utilities. The Tenants said the rent for the whole townhouse was \$1,250.00, however as they were only renting the upper floor or 60% of the total area (and K.F. was residing in the lower suite), their rent should have been \$750.00. Instead the Tenants said they paid \$950.00 which included \$200.00 per month for utilities. Consequently, the Tenants argued that they have overpaid utilities.

B. Cleaning and Repair Expenses: The Landlord, K.F., said he noticed on or about March 18, 2011 that the Tenants had removed all of their belongings from the rental unit and he was told by a neighbour of the Tenants that they had moved out. Consequently, K.F. said he went into the rental unit on March 18, 2011 with his witness and started doing cleaning and repairs. K.F. admitted that he did not complete a move in or a move out condition inspection report or take any photographs. The witness for the Landlords said he is a friend of K.F. and sometimes helps him clean and repair the townhouses which K.F. manages for the corporate Landlord. The Landlords' witness claimed that he helped K.F. clean the rental unit prior to the Tenants moving in and that it was clean and in a good state of repair at that time. The Landlords' witness also claimed that the rental unit was not clean at the end of the tenancy.

The Tenants initially said they moved out on March 24, 2011 but later said they moved out on March 30, 2011 at which time they left the keys to the rental unit and another copy of their forwarding address in K.F.'s mail box (which K.F. denied). The Tenants argued that they moved out in stages and never saw any evidence of the Landlords having done any cleaning or repairs prior to them moving out. The Tenants also argued that they left the rental unit reasonably clean and undamaged at the end of the tenancy.

C. Carpet Cleaning Expenses: The Parties agree that the carpets in the rental unit were new and in good condition at the beginning of the tenancy. The Landlord, K.F., said the Tenants did not clean the carpets at the end of the tenancy so he incurred carpet cleaning expenses to have them done. The Tenants said there were few carpeted areas in the rental unit; on some stairs and in one bedroom. The Tenants said they rented a carpet cleaner and cleaned the carpets themselves.

Analysis

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 Tenants' forwarding address in writing (whichever is later) to either return the Tenants' 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 Tenants' 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.

The Parties agree that the Landlords have not returned the Tenants' security deposit and did not have the Tenants' written authorization to keep it. However, the Parties disagree as to whether the Tenants gave the Landlords their forwarding address in writing. On this issue, the Tenants have the burden of proof which means that they must show on a balance of probabilities that they gave the Landlords their forwarding address in writing. Given the contradictory evidence of the Parties and in the absence of any additional, corroborating evidence (such as a copy of the document in question or proof of service) to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants gave the Landlords their forwarding address in writing. Consequently, I find that the Tenants are not entitled to double the amount of their security deposit.

However sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or 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 he may not offset those damages from the security deposit. Consequently, the Landlords' application to keep the Tenants' security deposit is dismissed without leave to reapply and I find that the Tenants are entitled to recover their security deposit of \$475.00. I also find pursuant to s. 72(1) of the Act that the Tenants are entitled to recover from the Landlords the \$50.00 filing fee they paid for this proceeding. In summary, the Tenants have made out a total claim for **\$525.00**.

The Landlords' Claim:

A. Unpaid Utilities: The Landlords argue that there was a verbal agreement that the Tenants would pay 40% of the utilities for the rental property but that they have failed to pay them for the entire tenancy. The Tenants denied this and claim that utilities were included in the rent. On this issue, the Landlords have the burden of proof which means that they must show on a balance of probabilities that there was an agreement that the Tenants would pay utilities plus rent. However, I find that the weight of the evidence suggests that there was no agreement that the Tenants would pay utilities.

Section 13 of the Act requires a Landlord to prepare a written tenancy agreement which sets out the amount of rent and which specifies what services or facilities are included in the rent. The Landlord, K.F., admitted that the written tenancy agreement did not provide for the payment of utilities. Instead K.F. argued that this was a separate verbal agreement which the Tenants denied. K.F. also admitted that he did not make any demands for the payment of utilities from the Tenants until almost a year after the tenancy started. I am also persuaded by the Tenants' argument that they were paying an increased market rent to compensate the Landlords for utilities. For all of these reasons, I find that there was no agreement that the Tenants were to pay for utilities and that part of the Landlords' application is dismissed without leave to reapply.

B. Cleaning and Repair Expenses: Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except 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." Consequently, on this issue, the Landlords have the burden of proof and must show on a balance of probabilities that the rental unit was not reasonably clean and that any of the alleged damages were the result of an act or neglect of the Tenants rather than the result of reasonable wear and tear.

The Parties agree that the Landlords did not complete a move in condition inspection report (or a move out report). The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. The Landlord, K.F., relied on the corroborating evidence of his witness that the rental unit was clean and undamaged at the beginning of the tenancy. I do not give a lot of weight to the evidence of this witness as he admitted that he was not present at the rental unit when the Tenants took possession of it at the beginning of the tenancy. The Landlords also provided no evidence to show that any of the damages complained of were the result of neglect rather than reasonable wear and tear. Furthermore, the Tenants argued that they saw no evidence of cleaning and

repairs having been made during the time the Landlord, F.K. claimed he had done so. Consequently, I find that there is insufficient evidence to support the Landlords' claim for cleaning and repair expenses and this part of their application is also dismissed without leave to reapply.

C. Carpet Cleaning Expenses: RTB Policy Guideline #1 at p. 2 says (in part) that a Tenant is responsible for cleaning carpets after a tenancy of a year. Consequently, the Landlords have the burden of proof to show on a balance of probabilities that the Tenants did not clean the carpets at the end of the tenancy or if they did, that the carpets were still not reasonably clean.

The Tenants claimed that they rented a carpet cleaner and cleaned the carpets themselves at the end of the tenancy. The Tenants provided no corroborating evidence of this assertion (such as a receipt). The Landlords claim that the Tenants did not clean the carpets but provided little evidence of the condition of the carpets at the end of the tenancy. Furthermore, the Landlord, K.F., admitted that he took no steps to contact the Tenants to either arrange a move out inspection (as required under s. 35 of the Act) or to verify if the Tenants had moved out or to verify if they had cleaned the carpets. Given the contradictory evidence of the Parties on this issue and in the absence of any additional evidence from the Landlords that carpet cleaning was necessary, I find that there is insufficient evidence to conclude that the Landlords reasonably incurred this expense. Consequently, this part of the Landlords' claim is also dismissed without leave to reapply.

Conclusion

The Landlords' claim in its entirety is dismissed without leave to reapply. A Monetary Order in the amount of **\$525.00** 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 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: August 10, 2011.

Residential Tenancy Branch