

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the landlord handed the tenants a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on June 25, 2011. This Notice required the tenants to vacate the premises by August 31, 2011.

The male landlord (the landlord) confirmed that the landlords received a text message from the tenants on June 29, 2011 advising them that the tenants were ending their tenancy effective July 1, 2011. The landlord testified that the landlords received the tenants' July 5, 2011 letter confirming that they were ending their tenancy on July 1, 2011. The tenants entered a copy of the July 5, 2011 letter into written evidence. I am satisfied that the tenant's July 5, 2011 letter was sent in accordance with the *Act*, although the effective date for the end to this tenancy could not have been until July 20, 2011.

The male tenant (the tenant) confirmed that on July 19, 2011, the tenants received a copy of the landlords' dispute resolution hearing package sent by the landlord by registered mail on July 18, 2011. I am satisfied that the landlord served this package in accordance with the *Act*. I am also satisfied that the parties exchanged written evidence with one another in accordance with the *Act*.

At the commencement of the hearing, CF to assist the tenants as English is not their first language and they may have difficulty presenting their testimony. Initially, he said that he wished to act as a translator and witness. Upon clarification, he said that he had no direct knowledge of this tenancy or the rental unit. He said that the only oral testimony he could provide related to the service of the tenant's written evidence to the landlords. Since this was not at issue, I told CF that he was not needed as a witness so he could assist the tenants in translating during this hearing, his original request.

During the course of the hearing, it became apparent that CF was not actually translating material for the tenants but was acting more in the role of their agent. When challenged on this point, CF said that he did not speak the tenants' native language and asked that he be allowed to assist the tenants as their advocate. I allowed CF to participate in this hearing in that role with the agreement of the male tenant.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on April 1, 2010. When the original term expired, the tenancy continued on a month-to-month basis. Monthly rent was set at \$975.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$490.00 security deposit paid on March 15, 2010.

The parties agreed that the tenants paid all of their June 2011 rent and none of the July 2011 rent for this tenancy. Although the tenants were no longer living in the rental unit as of July 1, 2011, they confirmed that they did not remove all of the possessions that they took to their new residence until July 3, 2011. On that date, they left a key for the landlords but did not participate in a scheduled joint move-out condition inspection.

The parties confirmed that the female tenant and the female landlord conducted a joint move-in condition inspection on April 1, 2010. The landlord did not prepare a condition inspection report of that inspection on a Residential Tenancy Branch form. However, the parties agreed that the female tenant produced her own handwritten summary of the items that were dirty, damaged, or needed repair. The female tenant asked the female landlord to sign and date this report, a copy of which was retained by both parties. A copy of this move-in report was entered into written evidence by the landlords. Twenty-one items of concern were identified in the April 1, 2010 joint move-in condition inspection.

The landlords also entered into written evidence a copy of the joint move-out condition inspection report signed on March 31, 2010 for the previous tenancy in this rental unit. Although this report did not identify major damage, it is undated and incomplete in that the previous tenants did not sign anything stating that the report fairly represented the condition of the rental unit at the end of their tenancy.

The landlords applied for a monetary award of \$1,440.00. Their itemized list on their application for dispute resolution varied from a subsequent October 11, 2011 Monetary Order Worksheet that they submitted into written evidence for this hearing. This list asked for a monetary claim of \$1,091.00 for the following items:

Item	Amount
Transition Strips	\$60.48
Broken Fridge	220.62
Furniture and Garbage Disposal	150.00
Towel Bar and Faucet	30.00
Equipment Rental & Carpet Shampoo	45.00
Landlord's gas, time and travel	300.00
Replacement keys	30.00
Replacement of light bulbs and lights	36.00
Move-out cleaning	120.00
Baseboards, electric covers, light covers, paint and other missing broken items	100.00
Total Monetary Award Requested	\$1,092.10

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Analysis - Landlords' Application for Damage

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit at the start and end of this tenancy. The tenants maintained that many of the items in the landlords' claim were left in the same or better condition than when they moved into the rental unit in 2010.

When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

In this case, the parties agreed that there was a joint move-in condition inspection on April 1, 2010 that led to the female tenant's production of a handwritten inspection report noting many items that needed cleaning or repair. Although this was not an approved Residential Tenancy Branch form, this handwritten statement does provide evidence that the premises were not in pristine condition when the tenancy commenced. A \$75.00 allowance was given to the tenants at the commencement of the tenancy to clean and fix those items that were dirty or needed repair. The landlords also provided written evidence of the joint move-out condition inspection conducted with the previous tenants the day before this tenancy commenced.

Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

- 36** (2) *Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
- (a) does not comply with section 35 (2) [2 opportunities for inspection],*
 - (b) having complied with section 35 (2), does not participate on either occasion, or*
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Although I find that the landlords did not provide two written opportunities for inspection of the rental premises, the tenant did not dispute that they received a written request to conduct a joint move-out condition inspection. The tenant did not dispute the landlord's claim that the landlord made at least three attempts to schedule appointments to perform this inspection together. The landlord gave undisputed oral evidence that each time the tenants failed to attend and eventually left their key to the premises without formally surrendering the rental unit. Since the tenants had been given two keys when they commenced their tenancy, it was unclear to the landlords whether the tenants planned to continue returning to the rental unit to remove their belongings.

When the tenants did not attend the joint condition inspection and left one of their keys for the landlords, the landlords conducted their own condition inspection and sent a copy of this inspection to the tenants. The landlords also took photographs of the condition of the rental unit at the end of this tenancy and entered these photographs into evidence for this hearing. The tenant disputed the accuracy of these photographs, claiming that some of them may have been taken at some other time.

The different formats of each of the condition inspection reports entered into written evidence by the landlords make it somewhat difficult to make direct comparisons between some of the items noted in these reports and the damage claimed by the landlord. However, based on the written and oral testimony of the parties and the photographic evidence, I am satisfied on a balance of probabilities that the landlord has demonstrated that damage arose as a result of this tenancy that exceeded what would be expected from normal wear and tear. In addition, I find that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean" as some cleaning was required by the landlords after the tenants vacated the rental unit.

As outlined above, the landlords also need to demonstrate that they have suffered actual losses arising out of this tenancy. The tenants' agent questioned the accuracy of the amounts outlined in the landlords' Monetary Order Worksheet, noting that these figures vary considerably from those identified in the landlords' original application for dispute resolution. Although I have given the landlords' evidence in this regard careful consideration, I find that many of the landlords' claims are lacking substantive receipts, invoices or estimates.

The tenant and his agent accepted that the landlords' claim to repair the transition strips was justified. I allow the landlords' claim for \$60.48 for transition strips.

The only other documented written evidence supporting the landlords' claim for a monetary award was a transaction from the female landlord's VISA statement which showed that a payment for an unspecified item was paid to Sears for \$220.62. The landlord gave undisputed oral testimony that this payment was for repairs to the tenants' refrigerator that were necessary when the tenants removed part of that appliance. While the female landlords' VISA statement does provide some evidence that a payment was made to Sears on that date, it is not at all clear that this payment was for repair of a refrigerator or if it had any bearing on this rental unit. I also note that there was no reference to any damage to the refrigerator in the landlords' July 3, 2011 condition inspection report. Given the unclear nature of this receipt and the failure to

mention anything other than cleaning related to the tenants' refrigerator, I disallow the landlords' claim for reimbursement of repairs to the tenants' refrigerator.

The landlords have submitted the remainder of their claim for a monetary award without supporting documentation. For some of these items, it is unclear if the damage claimed has actually been repaired. For other items (e.g., garbage and furniture disposal, the landlord's gas, time and travel), the landlords' Monetary Order Worksheet provides estimates that would seem high, both from the number of hours required (e.g., ten hours of travel from Vancouver to the dispute address in Surrey) and the rate charged per hour (\$30.00 per hour). Some of these items such as the issuance of replacement keys may not be recoverable from the tenants, but an expected cost of the landlords' business at the end of a tenancy.

In general terms, I accept from the photographic, written and oral testimony that considerable cleaning, removal of the material left behind by the tenants and repairs were required at the end of this tenancy for which the tenants are responsible. I allow the landlords a general monetary award in the amount of \$300.00 for general cleaning, dumping and repairs arising out of this tenancy. In making this monetary award, I recognize that it would have taken the landlords at least 15 hours to clean and repair the rental unit at a rate of \$20.00 per hour.

Analysis – Landlords' Application for Authorization to Retain the Tenants' Security Deposit and Other Monetary Issues

As the landlords have been successful in part with their application for dispute resolution, I allow them to recover their \$50.00 filing fee from the tenants.

The landlords have applied for authorization to retain the tenants' security deposit in partial satisfaction of the monetary award they were seeking from the tenants. No interest is applicable to this security deposit over the term of this tenancy.

I allow the landlords to retain \$410.48 from the tenants' security deposit. I order the landlords to return the remaining \$79.52 from that security deposit to the tenants forthwith.

Conclusion

I find that the landlords are entitled to retain \$410.48 from the tenants' security deposit for damage to the rental unit arising out of this tenancy and for recovery of their filing fee for this application. This amount is calculated on the following terms:

Item	Amount
Damage – Transition Strips	\$60.48
Damage – Cleaning, Dumping and General Repairs Arising from Tenancy	300.00
Less Security Deposit	-490.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	(\$79.52)

I issue a monetary Order in the tenants' favour for the remaining \$79.52 of the tenants' security deposit, which the landlords must return forthwith.

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.