



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in partial payment of those amounts.

The Landlords said on September 19, 2011 they served the Tenant by registered mail to a forwarding address provided by her (in a message left on their answering machine in May of 2011) with the Application and Notice of Hearing (the "hearing package"). According to the Canada Post online tracking system, the hearing package was "refused by the recipient" and returned to the sender. Section 90 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to accept that mail. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Are the Landlords entitled to cleaning and repair expenses and if so, how much?
2. Are the Landlords entitled to compensation for a loss of rental income?
3. Are the Landlords entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on July 5, 2005 and ended on May 28, 2011 when the Tenant moved out. Rent was \$726.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of \$325.00 and a pet damage deposit of \$100.00 on August 1, 2005.

The Landlords completed a move in condition inspection report with the Tenant on July 30, 2005. The Landlords said the rental unit was only a year old at the beginning of the tenancy and was in good condition with the exception of carpeting that had some stains. The Landlords said the Tenant moved out earlier than they expected so they did an initial inspection on May 31, 2011 but found some issues so they sent the Tenant a

Final Notice to Schedule a Condition Inspection (by courier) on June 3, 2011 and again on June 9, 2011 however the Tenant did not respond.

The Landlords said it was a term of the tenancy agreement that there would be no smoking in the rental unit. The Landlords said they did periodic inspections of the rental unit throughout the tenancy and thought they could smell something, however, they believed that the Tenant may have been concealing the smell with candles and air fresheners. The Landlords said when they attending the rental unit on one occasion in early 2010, they saw the Tenant smoking and saw a garbage can tipped over with many cigarette butts strewn on the ground. Consequently, the Landlords said they confronted the Tenant about smoking in the rental unit and she initially denied it until they threatened to take a swab of the residue on the walls and have it tested at the Tenant's expense. On April 17, 2010, the Tenant gave the Landlords a letter in which she admitted to smoking in the rental unit but claimed that she had done so a few times.

The Landlords said they obtained a quote from a restoration company in May 2010 to sanitize and repaint the rental unit for a cost of approximately \$6,500.00. The Landlords admitted that they did not have this work done but instead cleaned and repainted the rental unit themselves. The Landlords said it took them many hours to wash and prime all of the walls and ceilings given that the ceilings of the rental unit are vaulted and therefore they had to first set up scaffolding. The Landlords said that the carpets were also dirty and had additional stains at the end of the tenancy and they could not be restored despite numerous attempts by themselves and a professional carpet cleaner to remove the stains. The Landlords provided a quote for carpeting of a similar quality for approximately \$2,200.00.

The Landlords said 6 of the metal blinds in the rental unit were also damaged at the end of the tenancy and will have to be replaced at a cost of \$807.97 (including installation). The Landlords also said that it was a term of the tenancy agreement that the Tenant would clean the propane fireplace every year however she did not do so and it required cleaning at the end of the tenancy at a cost to them of \$88.48. The Landlords said that as a result of the time it took them to complete all of these repairs, they could not re-rent the rental unit and lost rental income for June 2011.

Analysis

Sections 32(3) and (4) of the Act says that a Tenant must repair damage to the rental unit that is caused by the act or neglect of the Tenant or a person permitted on the residential property by the Tenant but is not responsible for reasonable wear and tear. 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."

I find that it was a term of the Parties' tenancy agreement that there was to be no smoking in the rental unit but that the Tenant did smoke in the rental unit during the tenancy. The Tenant claimed in her letter dated April 17, 2010 that she had smoked only a few times. The Landlords claim that based on the yellowed discolouration of the walls and ceilings at the end of the tenancy, they believe the Tenant had been smoking inside the rental unit for a long period of time. In support of their position, the Landlords provided photographs they said they took of the rental unit prior to the tenancy as well as photographs that they said they took on May 31, 2011. Based on the evidence of the Landlords and in the absence of any evidence from the Tenant to the contrary, I find on a balance of probabilities that the Tenant was smoking in the rental unit for a prolonged period of time.

I find however, that the restoration estimate provided by the Landlords to bring the rental unit to its pre-tenancy non-smoking condition is unreasonable. In particular, the estimate is 18 months old and includes an amount of approximately \$1,300.00 for a profit margin, administrative fees and taxes. Furthermore, the Landlords admitted that they thoroughly cleaned and re-painted the rental unit themselves at the end of the tenancy and as a result, I conclude that this work no longer needs to be done. Consequently, I find that the Landlords are entitled to recover their reasonable expenses for cleaning and repainting. The Landlords did not provide any receipts for their cleaning and painting expenses (or supplies) however they estimated that they spent a total of approximately 250 hours cleaning and painting. In the circumstances, I award the Landlords the amount of **\$5,000.00** which is equivalent to the amount that the restoration company would have charged for cleaning and painting only (less the amount for specialized, ozone products).

The Landlords also sought to recover \$2,200.00 for new carpeting. The Landlords admitted that there were some small stains on the living room and one of the bedroom's carpets at the beginning of the tenancy. The Landlords claimed, however that there was additional, significant staining on the carpeting at the end of the tenancy which is shown in their photographs. In the absence of any evidence from the Tenant to the contrary, I find that the Landlords are entitled to compensation for the damaged carpets. However, I find that the Landlords are not entitled to recover the cost of a new carpet to replace a carpet that was 7 years old (and would have had some wear and tear) at the end of the tenancy. Instead, I find that the Landlords are entitled to the recover the depreciated cost of the damaged carpeting. RTB Policy Guideline #37 at Table 1 says that the useful lifetime of a carpet is 10 years. Consequently, I award the Landlords 30% of the cost of the damaged carpeting (of \$2,068.66 which excludes the cost of installation) or **\$620.60**.

The Landlords further sought to recover \$807.97 to replace blinds in the rental unit. The Landlords said the blinds were in good condition at the beginning of the tenancy but that at the end of the tenancy many of the slats were bent beyond repair. Based on the Landlords' photographs, it appears that many of the slats in the kitchen blinds are bent and therefore the whole unit will have to be replaced. The Landlords provided

photographs of other blinds in the kitchen/eating area and front room that have minimal damage but which they claim have yellowed from smoke. The Landlords provided no photographs of the blinds in the 2 bedrooms that were also alleged to have been damaged. Based on the evidence of the Landlords, I find that they are entitled to be compensated for damaged blinds in the kitchen and discoloured blinds in the eating area and front rooms only. However, as indicated above, the Landlords are not entitled to be compensated for the cost of new blinds to replace blinds that were 7 years old at the end of the tenancy (and would have had some wear and tear). RTB Policy Guideline #37 at Table 1 says that the useful lifetime of venetian blinds is 10 years. Consequently, I award the Landlords 30% of the cost of the 3 damaged blinds (\$60.00 + \$258.00 + ½ installation or \$85.12 = \$403.12) for a total of **\$120.94**.

Although the Landlords argued that it was a term of the tenancy agreement that the Tenant was responsible for cleaning the propane fireplace annually, I find that this is not the case. I find that the amount claimed by the Landlords for cleaning and servicing the fireplace is a matter that falls under the Landlords' responsibility to repair and maintain under s. 32(1) of the Act and therefore this part of their application is dismissed without leave to reapply.

The Landlords also sought to recover a loss of rental income for the month of June 2011 as they claimed that due to the need to do extensive cleaning and repaint the entire rental unit, they were unable to rent it for that month. RTB Policy Guideline #3 states at p. 2 that "even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for a loss of rent. The Landlord is required to mitigate the loss by completing the repairs in a timely manner." I find that even though the Tenant gave the Landlords one month notice she was ending the tenancy, I also find that they were unable to re-rent the rental unit until it could be thoroughly cleaned and painted. Consequently, I find that the Landlords are entitled to be compensated for a loss of rental income for June 2011 in the amount of **\$726.00**.

The Landlords also sought to recover their expenses for photographs and serving documents on the Tenant however the Act does not make any provision for the recovery of costs associated with preparing and attending dispute resolution hearings other than the recovery of the filing fee. Consequently, the Landlords' application to recover those expenses is dismissed without leave to reapply. The Landlords are entitled pursuant to s. 72 to recover the **\$100.00** filing fee they paid for this proceeding. I Order the Landlords pursuant to s. 38(4) of the Act to keep the Tenant's security deposit and pet damage deposit (plus accrued interest) in partial payment of the damage award. The Landlords will receive a Monetary Order for the balance owing as follows:

Cleaning and Painting:	\$5,000.00
Damaged Carpeting:	\$620.60
Damaged Blinds:	\$120.94
Loss of Rental Income:	\$726.00
Filing Fee:	<u>\$100.00</u>

Subtotal:	\$6,567.54
Less: Security Deposit:	(\$325.00)
Pet Deposit:	(\$100.00)
Accrued Interest:	<u>(\$15.04)</u>
Balance Owing:	\$6,127.50

Conclusion

A Monetary Order in the amount of **\$6,127.50** has been issued to the Landlords and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, 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: December 06, 2011.

Residential Tenancy Branch