



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for a loss of rental income and for expenses for cleaning and repair expenses, moving and storage and locksmith fees as well as to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

At the beginning of the first day of the hearing, the Tenant, R.C., claimed he had not received the Landlords' evidence. The Landlords' agent claimed that she sent her documents to the Tenants on various dates by regular mail on various dates to a forwarding address provided by them. At the conclusion of the first day of the hearing, the Landlords' agent agreed to re-serve her evidence on R.C. and R.C. was ordered to serve the Landlords with any response to that evidence no later than December 28, 2011.

At the beginning of the second day of hearing, the Landlords' agent sought to have R.C.'s response excluded from evidence as she claimed that R.C. served it on the Landlords on January 4, 2012. I find that most of the Tenants' evidence package is not relevant to this matter but instead addresses a claim the Tenants argue they may have against the Landlords but have not yet pursued. The balance of the Tenants' response is merely written submissions. In the circumstances, I find that the Tenants' documents should be excluded, however I note that there is no prejudice to the Tenants in so doing given that they were permitted to give their submissions orally at the hearing.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This fixed term tenancy started on May 1, 2011 and was to expire on May 1, 2012, however it ended on September 30, 2011 when the Tenants moved out. Rent was \$1,225.00 per month payable in advance on the 30th day of the preceding month. The Tenants paid a security deposit of \$612.50 at the beginning of the tenancy.

The Landlords did not complete a condition inspection report at the beginning of the tenancy. The Landlords' agent, A.S., said she set up an appointment with the Tenants to do a move out inspection on September 30, 2011 however the Tenants did not attend the inspection. A.S. said she tried to contact the Tenants by telephone that day but they did not return her messages, did not leave a forwarding address and did not return their keys. A.S. said she did not try to reschedule the move out inspection because new tenants were supposed to be moving in the following day. Consequently, A.S. said she completed the move out inspection report on September 30, 2011. A.S. admitted that she discovered where the Tenants were residing on October 4, 2011 and that the new tenants did not take possession of the rental unit until October 7, 2011.

A.S. said the new tenants could not take possession of the rental unit on October 1, 2011 because the Tenants left some of their belongings (ie. some furnishings, clothes, food, a filing cabinet and some personal products) in the rental unit, had not cleaned and left some damages that required repairs. Consequently, A.S. argued the Landlords lost rental income for 6 days in October 2011.

A.S. also said she left a telephone message for the Tenants on October 3, 2011 advising them to pick up their belongings and in particular advised them that she would be leaving them in a hallway in the building for them to collect and if they had not been removed by the 5th, they would be disposed of. A.S. said the building manager advised her later that day that the Tenants' belongings could not be stored in the hallway because they posed a fire hazard. Consequently, A.S. said on October 3, 2011, she arranged to have the articles moved into a storage facility. A.S. admitted that she did not advise the Tenants that their articles had been removed but claimed that the Landlord, M.W., also left a message for the Tenants on October 3, 2011 advising them to move their belongings as soon as possible.

A.S. said that she incurred general cleaning expenses of \$175.00 and carpet cleaning expenses of \$100.80 which the Tenants did not dispute. A.S. said she also incurred expenses of \$140.00 to change the locks because the Tenants did not return their keys and moving and storage expenses of \$657.16 and \$332.85, respectively because the Tenants did not remove their belongings and later asked her not to dispose of them.

The Tenant, R.C., said he spoke to A.S. on September 30, 2011 and offered to drop off his keys the following day. R.C. said he could not recall exactly what A.S. had said but thought she may have wanted all of the keys including those of his co-tenant, B.P., (which A.S. denied). The Tenants argued that they should not be responsible for this expense because they were supposed to have access to the rental property until October 3, 2011 to remove their belongings and the Landlords changed the locks on the rental unit on October 1, 2011. R.C. also claimed that his co-tenant, B.P., went to the rental unit on October 2, 2011 but the locks were changed. A.S. said she thought the locks were not changed a few days later. R.C. said after they received a telephone message from the Landlords on October 3, 2011, B.P. rented a storage locker and returned to the rental unit on October 3 or 4, 2011 with a truck and a friend to assist her in removing her belongings but they were no longer there. Consequently, the Tenants

argued that they should not be responsible for moving and storage expenses because the Landlords did not give them an opportunity to remove their belongings.

A.S. also claimed that during the tenancy, the Tenants painted one bedroom wall a dark blue colour and also painted two other rooms without the Landlords' consent. A.S. said the Landlords incurred expenses of \$1,064.26 to repaint the walls in these rooms and to make other repairs (set out on an invoice dated October 10, 2011). The Tenants admitted that they painted one wall a dark blue color but denied that they painted any other walls. The Tenants denied that they damaged the walls and other items claimed by the Landlord and argued that this would have been evident had the Landlords completed a move in condition inspection report.

Analysis

1. Cleaning Expenses:

The Tenants did not dispute the Landlords' claim for cleaning expenses of **\$175.00** and carpet cleaning expenses of **\$100.80** and therefore I find that the Landlords are entitled to recover those amounts.

2. Repair Expenses:

Section 32 of the Act says that a Tenant is responsible for damages caused by his act or neglect but is not responsible 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."

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit 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 Landlords' agent, A.S., admitted that a move in inspection was not completed at the beginning of the tenancy and therefore there is little, reliable evidence of the condition of the rental unit at that time. Consequently, I find that there is insufficient evidence to conclude that Tenants were responsible for damages to walls and doors or that those damages were the result of an act or neglect of the Tenants as opposed to reasonable wear and tear. I also find that the Tenants are not responsible for the cost of installing missing baseboards. The Tenants' undisputed evidence was that the baseboards were

removed after flooding occurred in May 2011 and were not reinstalled. I further find that there is insufficient evidence to conclude that the Tenants painted two bedrooms that had to be repainted at the end of the tenancy. The Tenants admitted that they painted a wall in one bedroom a dark color and did not repaint it at the end of the tenancy. The Tenants claimed, however, that they thought they had the Landlords' consent to do so. I find, however, based on the e-mail correspondence between the Parties at the beginning of the tenancy that the Tenants were told that if they used the dark blue color, they would be responsible for returning the wall to its original color at the end of the tenancy. Consequently, I find that the Tenants are responsible for this repair expense only which I assess at **\$250.00**.

3. Moving and Storage Expenses:

Section 24(1)(a) of the Regulations to the Act says that "*a Landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended.*"

The Tenants admitted that they agreed to give the Landlords vacant possession of the rental unit on September 30, 2011 but that B.P. did not remove all of her possessions by that day. The Tenants argued however, that the Landlords' agent, A.S., gave them permission on October 3, 2011 to retrieve their belongings from the rental property by October 5, 2011 but that when they attempted to do so, the Landlords had already removed them. Consequently, the Tenants argued that it was unnecessary for the Landlords to incur these expenses because they had already arranged for moving and storage, however they provided no corroborating evidence in support of this assertion.

The Tenants claimed that A.S. left a telephone message for them at 9:30 a.m. on October 3, 2011 advising them that their belongings would be removed from the rental unit and would be put in the hallway for them to collect no later than October 5, 2011. The Tenants also claimed that they received a message from the Landlord, M.W., the same day at 10:23 a.m. asking them to contact her about their intentions with respect to their belongings otherwise the Landlords would have to put their belongings in storage.

A.S. argued that the Tenants abandoned their belongings and therefore the Landlords were entitled to either dispose of them or store them. However, given that A.S. granted the Tenants an extension of the time on October 3, 2011 to collect their belongings I find that the Landlords were not entitled to deem the Tenants' belongings as having been abandoned until October 5, 2011. Consequently, I conclude that when A.S. removed the Tenants belongings on the afternoon of October 3, 2011, she denied the Tenants the opportunity to mitigate their damages. As a further consequence, I find that the Tenants should not be responsible for the Landlords' moving expenses they incurred on October 3, 2011. In making this finding, I am mindful that the Landlord, M.W., also advised the Tenants on October 3, 2011 that their belongings could be put in storage. However, neither M.W. nor her agent, A.S., advised the Tenants that there

had been a change of circumstances that would require them to remove their belongings by 1:00 p.m. that day and that their previous authorization to remove them by October 5, 2011 had been revoked.

I find that the Tenants are responsible for reimbursing the Landlords' for their storage expenses for October 2011. The Tenants admitted that they would have had to put the belongings in storage in October 2011 however they provided no documentary evidence that they had secured storage for that month as they claimed. Consequently, I find that the Tenants are responsible for the Landlords' storage expenses for October 2011 in the amount of \$105.00 plus tax of \$12.60 for a total of **\$117.60**.

I find that the Tenants are not responsible for storage expenses for November and December 2011 as I find that the Landlords would not have incurred those expenses had they allowed the Tenants to collect their belongings as they agreed they could do on October 3, 2011.

4. Lock Change Expenses:

Section 37(1) of the Act says that a tenant must vacate the rental unit by 1 p.m. on the date the tenancy ends. Section 37(2)(b) of the Act says that when a Tenant vacates a rental unit, the tenant must give the Landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

The Tenants argued that they should not be responsible for the Landlords' expenses to change the locks because the Landlords' agent gave them permission to remove belongings from the rental property by October 5, 2011 but changed the locks to the rental unit on October 1, 2011. However, I find that there is no merit to this argument. Pursuant to s. 37 of the Act, the Tenants were required to return all of their keys to the Landlords on September 30, 2011. The Tenants did not return their keys that day because one of them still had belongings in the rental unit. Furthermore, the Landlords' agent did not give the Tenants permission to store their belongings in the rental unit until October 5, 2011 but instead advised them that they would be stored in a common area. Consequently, I find that the Landlords are entitled to recover locksmith fees of **\$140.00**.

5. Loss of Rental Income:

Section 37(2)(a) of the Act says that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

RTB Policy Guideline #1 (Responsibility for Residential Premises) states at p. 2 that *“any changes to the rental unit and/or rental property not explicitly consented to by the landlord must be returned to the original condition. If the tenant does not return the rental unit to its original condition before vacating, the landlord may return the rental unit to its original condition and claim the costs against the tenant.”*

I find that the Tenants agreed to give the Landlords vacant possession of the rental unit on September 30, 2011 so that new tenants could move in for October 1, 2011. However, I find that the Landlords were not given vacant possession because the Tenants left a number of belongings behind in the rental unit. The Landlords' agent, A.S., admitted that the Tenants' items were removed from the rental unit on October 3, 2011, however she claimed that the new tenants were also unable to take possession of the rental unit until October 7, 2011 because the rental unit needed to be cleaned and repaired. The Tenants did not dispute that they did not do general cleaning or carpet cleaning. Although the Tenants argued that they believed they had the Landlords' consent to paint a wall a dark blue colour, as indicated above, I find that the Parties' e-mail correspondence clearly shows that the Landlords advised the Tenants that they would be responsible painting over the dark blue paint at the end of the tenancy.

According to the Landlords' invoices, cleaning and carpet cleaning services were provided on October 6 and 7, 2011 respectively. The Landlords' receipt for the painting and repairs has only an invoice date of October 10, 2011 and no date of service. In the circumstances, I find that the Landlords lost rental income for 6 days in October 2011 due to the Tenants' failure to remove their belongings and their failure to clean and repaint a wall in the rental unit. Consequently, I find that the Landlords are entitled to recover a loss of rental income for October 1 – 6, 2011 in the pro-rated amount of **\$237.10**.

As the Landlords have been largely successful in this matter, I find that they are entitled to recover from the Tenants the **\$50.00** filing fee they paid for this proceeding. Consequently, I find that the Landlords have made out a total monetary claim for **\$1,070.50**

6. Security Deposit:

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 a security deposit and pet damage 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.

I find that the Landlords contravened s. 23 of the Act by not completing a move in condition inspection report at the beginning of the tenancy. Although there was some

debate as to whether the Landlords' agent also failed to take the required steps under the Act to reschedule a condition inspection at the end of the tenancy, I find that it would make no difference to the outcome as the Landlords' right to keep a security deposit is extinguished if the Landlord fails to complete a condition inspection report either at the beginning or at the end of the tenancy.

However, I find that s. 23 of the Act does not prevent the Landlords from making a claim against the security deposit for things other than damages to the rental unit, such as for a loss of rental income for October 2011, moving and storage expenses and locksmith expenses. As a result, I Order the Landlords' to keep the Tenants' security deposit of \$612.50 in partial satisfaction of their monetary award for a loss of rental income, general cleaning and carpet cleaning expenses, locksmith expenses and storage expenses. The Landlords will receive a Monetary Order for the balance owing of \$458.00.

As a final note, the Tenants' written submissions alleged a claim for damages against the Landlords. However, given that the Tenants did not file an application for dispute resolution, those claims could not be considered in this hearing.

Conclusion

A Monetary Order in the amount of **\$458.00** has been issued to the Landlords 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: January 12, 2012.

Residential Tenancy Branch