



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid utilities, for compensation 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.

At the beginning of the hearing, the Tenants claimed that they had not received copies of the Landlords' receipts and estimates but only a list of them that was set out on the Landlords' Monetary Order Worksheet. The Landlord, L.M., claimed that he sent receipts to the Tenants with the Application and Notice of Hearing. On this matter, the Landlords must prove (on a balance of probabilities) that they served the Tenants with their evidence as they claimed. However given the contradictory evidence of the Parties and in the absence of any corroborating evidence from the Landlords to resolve the contradiction, I find that there is insufficient evidence to conclude that the Tenants were served with the receipts and estimates in question and accordingly they are excluded from evidence pursuant to RTB Rule of Procedure 11.5(b).

Issue(s) to be Decided

1. Are there unpaid utilities and if so, how much?
2. Are the Landlords entitled to compensation for cleaning and repair expenses and if so, how much?
3. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This month-to-month tenancy started on May 1, 2012 and ended on or about April 22, 2012 when the Tenants moved out. Rent was \$1,200.00 per month due in advance on the 1st day of each month plus utilities. The Tenants paid a security deposit of \$600.00 at the beginning of the tenancy.

The Parties agree that neither a move in nor a move out condition inspection report was completed by the Landlords. The tenancy agreement contains an addendum dated May 3, 2012 and signed only by one of the Landlords that lists "defects." The Landlord, L.M. said the Tenant, C.R., moved out sometime prior to April 22, 2012 and that on April

22, 2012 he got a call from the other Tenant, R.C., saying he had to move out that day because he had to work out of town and wanted to do a move out inspection. The Landlords said they were not available that day and were unable to complete a move out inspection report because the Tenants could not be reached thereafter. The Landlord, L.M., said he completed a move out condition inspection report on April 23, 2012 but he did not provide a copy of it as evidence at the hearing. The Landlords also provided photographs they said they took of the rental unit between April 23 and May 1, 2012.

The Tenants claim they gave the Landlords notice on or about March 31, 2012 that they would be ending the tenancy. The Tenant, C.R., said he contacted the Landlords a few days in advance of April 22, 2012 and arranged to do a move out inspection for that day (which the Landlords denied) but on the 22nd he discovered that the Landlords were out of town and therefore unavailable to do one. The Tenant said he had to leave town for work for two weeks (and would be out of cell phone range). The Tenant, R.C., said she left a number of messages for the Landlords at the beginning of May 2012 regarding the security deposit but they did not return her calls. The Parties agree that on May 14, 2012, the Tenant, R.C. contacted the Landlords and advised them of the Tenants' forwarding address. The Tenants confirmed at the hearing that their address for service on the Landlords' application for dispute resolution is their forwarding address.

The Landlords claim that at the end of the tenancy the Tenants had utility arrears of \$594.45. The Landlords said that as of the time of the hearing, they discovered that one of the Tenants had paid \$390.43 of this amount but that the balance of \$204.00 had been added to their tax account and that they had paid this amount. The Tenant, C.R., claimed that she received a call from the utility provider on July 4, 2012 advising her that the utility arrears had not been paid as of that date. The Tenant, R.C. claimed that he paid the balance of the utility arrears on July 23, 2012. The Landlords undertook to provide a copy of their tax receipt to confirm payment of the outstanding utilities following the hearing but did not do so.

The Landlords claim that at the end of the tenancy, the rental unit required additional cleaning. In particular, the Landlords said they had to clean behind kitchen appliances, under the stove elements, on top of the cupboards, all of the floors, in a broom closet and inside one shower stall in the carriage house. The Tenants admitted that they did not clean behind the appliances however they claimed that all of the floors, bathrooms and cupboards were cleaned at the end of the tenancy.

The Landlords also claim that they incurred expenses of \$713.58 to repair and repaint portions of the rental unit. In particular, the Landlords claim the Tenants left large holes in a wall from mounting a television and cut into an electrical outlet (in a bedroom on the bottom level of the carriage house) that had to be repaired. The Landlords also claim the Tenants painted a great room and part of an adjoining room purple and painted a bedroom a red color. The Landlords admitted that they gave the Tenants permission to paint but argued that they didn't expect that the colours would be so dramatic.

Consequently, the Landlords said they had to repaint the rooms in question to their original colour (ie. beige and green) and touch up walls that had marks on them.

The Tenants claimed that the Landlords never asked to review the colours they wanted to paint with argued that they would not have painted had they known that the Landlords would make them return the walls to their original colour. The Tenants argued that the colours were not outrageous but instead complimented the coloring of the flooring. The Tenants said the Landlords gave them permission to mount the television and that they filled and sanded the holes at the end of the tenancy. The Tenants said they asked the Landlords if they should also paint over the patches, however the Landlords advised them not to bother because they would be repainting in any event.

The Landlords claim that the Tenants left a burn mark on the wooden fireplace mantle and that they received an estimate that it would cost \$300.00 to repair this damage. The Tenants admit that the mantle was damaged by a candle that had burned down but argued that they should not be responsible for this because it was accidental. The Landlords also claimed that the Tenants damaged the wood capping on some stairs and that it would cost an estimated \$350.00 to repair this damage. The Tenants claimed that they were unaware of this damage and argued that there was no evidence that it occurred during the tenancy.

Analysis

Unpaid Utilities: The Landlords claim the Tenants had utility arrears of \$204.01 at the end of the tenancy which were added to their tax account and paid by them. The Landlords undertook to provide documentary evidence of this but failed to do so. The Tenants claim that they paid the outstanding amount on July 23, 2012 after being advised on July 4, 2012 that the amount had not been paid. In the circumstances, I find that there is insufficient evidence to conclude that the Landlords paid the outstanding utilities and that part of their claim is dismissed without leave to reapply.

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.”

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 or if she has left a rental unit unclean at the end of 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.

Cleaning expenses: In support of their claim for cleaning expenses the Landlords provided only three photographs that show a dustpan full of debris, debris on the floor behind the stove and a small amount of dirt on the floor of a shower stall. I find that this evidence is not sufficient to support the Landlords' claim for 10 hours of cleaning and instead I award them compensation for one hour of cleaning for a total of **\$20.00**.

Wall Repairs & Repainting expenses: RTB Policy Guideline #1 at p. 2 says that "any changes to the rental unit not explicitly consented to by the landlord must be returned to the original condition. If the Tenant fails to do so, the Landlord may return the rental unit to its original condition and claim the costs against the tenant." The same Policy Guideline at p. 2 says "if a tenant follows the landlord's reasonable instructions for hanging and removing pictures, etc, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes. However, the tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage." RTB Policy Guideline #1 also says at p. 4 that a Landlord is responsible for painting the interior of a rental unit at reasonable intervals and RTB Policy Guideline #40, at p. 5 says the expected lifetime of interior paint is four years."

The Tenants claim the Landlords gave them consent to drill holes in the wall to mount a television and to repaint. The Landlords admit that they gave their consent but claim they were unaware that the Tenants would be mounting a television or painting with dark colours. The Landlords claimed that the rental unit was freshly painted at the beginning of the tenancy however the Tenants deny this and claim there would have been no opportunity to do so as the previous tenants were moving out as they were moving in.

On this issue, the Landlords bear the burden of proof to show that the Tenants did not have their consent to paint or to drill holes in the wall to mount a television. Based on the Landlords' failure to restrict the Tenants' colour selection or to require their prior approval of the Tenants' colour choices, I find that the Landlords gave the Tenants their consent to paint in whatever colour they chose. Similarly, I find that when the Tenants approached the Landlords about mounting screws into beams, the Landlords gave the Tenants their consent to do so and did not place any restrictions on them as to how to do it. However, I find that the Tenants did make alterations to an electrical outlet in a bedroom without the Landlords' consent and did not return it to its original condition. Consequently, I find that the Landlords are entitled to be compensated only for this repair in the amount of **\$50.00**.

Other Repair expenses:

(a) Fireplace Mantle: I find that the Tenants are responsible for the damage to the fireplace mantle. Section 37 (reproduced above) indicates that the damage for which a Tenant is responsible may also be damage caused by a Tenant's neglect. The Landlords relied on a repair estimate however, as indicated in the Introduction to this Decision, I find that a copy of this estimate was not served on the Tenants and therefore they had no opportunity to respond to it. Consequently, I award the Landlords **\$200.00** for this damage.

(b) Nose caps for Stairs: In the absence of any reliable evidence regarding the condition of the stairs at the beginning of the tenancy (such as a condition inspection report or photographs, etc.) I find that there is insufficient evidence to conclude that this damage occurred during the tenancy due to an act or neglect of the Tenants and accordingly this part of the Landlords' claim is dismissed without leave to reapply.

In summary, I find that the Landlords have established a monetary claim for \$270.00. As the Landlords have proven less than 20% of their claim, I find that this is not an appropriate case to order the Tenants to bear the cost of the filing fee paid by the Landlords and that part of their claim is also dismissed without leave to reapply. At the hearing, the Tenants confirmed that their address for service on the Landlords' application is their forwarding address. Consequently, I find that as of the date of this decision, the Landlords have the Tenants' forwarding address in writing for the purposes of s. 38(1) of the Act.

As a further consequence, ***I Order the Landlords to keep \$270.00 of the Tenants' security deposit in full satisfaction of their monetary claim and to return the balance of the security deposit in the amount of \$330.00 to the Tenants forthwith.***

Conclusion

A Monetary Order in the amount of \$330.00 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: July 31, 2012.

Residential Tenancy Branch