



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed July 11, 2012: MNSD; FF

Landlord's application filed July 13, 2012: MND; MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek a Monetary Order in the equivalent of double the amount of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a Monetary Order for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

This matter was first convened on September 20, 2012, and was adjourned by consent to October 15, 2012.

At the start of the Hearing I introduced myself to the participants, explained the hearing process and provided the parties an opportunity to ask questions about the hearing process. The parties were provided the opportunity to submit documentary evidence prior to the hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

It was determined that the Tenants' witness served the Landlord with the Tenants' Notice of Hearing documents by handing the documents to the Landlord on July 13, 2012. The Landlord acknowledged receipt of the Tenants' documentary evidence and a copy of a CD on September 6, 2012. It was also determined that the Landlord mailed the Tenants her Notice of Hearing documents, by express post mail, on July 16, 2012. Included in that package was the Landlord's documentary evidence.

Issues to be Decided

- Are the Tenants entitled to return of the security deposit and compensation pursuant to the provisions of Section 38(6) of the Act?
- Is the Landlord entitled to a monetary award for damage to the rental unit, her labour costs to clean and paint the rental unit, and the cost of replacing missing curtains?

- May the Landlord apply the security deposit towards partial payment of her monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 27, 2011 and ended on May 31, 2012. Monthly rent was \$1,800.00, due on the last day of each month. The Tenants paid a security deposit in the amount of \$900.00 on August 1, 2011.

The Tenant RB testified that the Landlord would not allow anyone else at the move out inspection, so she did it alone with the Landlord. She stated that she wrote her forwarding address on page 3 of a handwritten move-out inspection report on May 31, 2012. The Landlord stated that she wrote the Tenant's address on the report, but it was incomplete because the Tenant did not know her postal code. The Tenant reiterated that she provided her full address after she made a phone call to confirm her postal code. She stated that it was she who wrote the address on the paper, not the Landlord.

The Tenants testified that they did not agree that the Landlord could keep any of the security deposit and that none has been returned to them.

The Landlord stated that the Tenants did not clean the rental unit and that they damaged walls. In addition, she testified that the Tenants removed some curtains from the rental unit and left the refrigerator unplugged. She stated that when she plugged it back in, it smelled strongly of rotten fish and that the freezer did not work. The Landlord testified that the fridge was approximately 10 years old at the beginning of the tenancy.

The Landlord stated that the Tenants did not unclog the sink in the laundry room and that it took a couple of bottles of Drano to remove the blockage.

The Landlord seeks a monetary award, calculated as follows:

Landlord's labour to clean the rental unit (34.5 hours @ \$25.00 per hour)	\$862.50
Cost of replacing fridge with another used one	\$250.00
Cost of 2 large bottles of drano (@6.99)	\$13.98
Recovery of filing fee	\$50.00
Cost of developing photographs provided in evidence	\$170.49
Cost of replacing curtains and sheers downstairs	\$40.00
Cleaning of oven to remove oven cleaner and damage to oven	\$100.00
Clean carpets downstairs and redo upstairs carpets	\$60.00
Prep walls and paint bathroom, bedroom and living room	<u>\$200.00</u>

TOTAL	\$1,797.94
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The Tenants and their witness stated that the rental unit was in a clean condition at the end of the tenancy. They testified that the Tenants rented a carpet shampooer and thoroughly cleaned the bathroom, kitchen and all other rooms in the house. They stated that they could not remove the mildew from the caulking around the tub because it was underneath the caulking.

The Tenant RB stated that they unplugged the fridge because it was unplugged when they moved in and that they thought that was how the Landlord wanted it, but that they left the doors open and a box of baking soda in the fridge and freezer. The Tenants stated that there were no odors in the fridge during the tenancy or on the day that they moved out.

The Tenants agreed that there were some small areas on the wood paneling where tape had pulled off the finishing, but that it was not as bad as the Landlord made it out to be. They also agreed that there were some larger holes in the living room where they had erected curtains for privacy, but that the Landlord had agreed that they could do it and that they had filled the holes and prepped the walls for painting. The Tenants stated that a curtain was mistakenly packed away by movers and that they do not dispute that portion of the Landlord's claim.

The Tenants testified that they had problems with the plumbing in the laundry room throughout the tenancy. They stated that any time the Landlord did her laundry, black soot would bubble up in the sink. The Tenants stated that the Landlord advised them at the beginning of the tenancy that the laundry sink clogs and advised them to use Drano, which they did regularly.

The Landlord's witness stated that she saw the rental unit before the Tenants moved in and again after they had moved out. She stated that the rental unit had new carpeting, new kitchen floors and new paint at the beginning of the tenancy. After the tenancy ended, she stated that the carpet was filthy, the walls had holes that were shoddily patched, the bathroom was filthy, the window sills had not been washed, the stove was filthy, there were cobwebs in corners and a bookcase had been damaged.

The Tenant's witness stated that he took a video of the rental unit on the day of the inspection and that it is obvious that the Tenants left the rental unit clean. The Tenants provided a copy of the CD in evidence. The Tenant's witness submitted that the Landlord's "before tenancy" pictures were taken from a distance and the "after tenancy" pictures were taken up close.

The Tenant RB stated that the Landlord did not prepare the walk out inspection on the required form, and that the Condition Inspection Report that the Landlord provided in evidence was not the Condition Inspection Report that she wrote her address on.

The Landlord testified that she filled out a proper Condition Inspection Report with the Tenant and also made notes on foolscap.

The Tenants stated that the copy of the Condition Inspection Report that the Landlord gave them in her documentary evidence is missing page 3.

Analysis

Regarding the Tenants' application:

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that she didn't receive the Tenants' forwarding address in writing. However, the Landlord had control of the document that the Tenant RB stated contained her address and that she had placed it on the document. The Landlord did not provide a copy of the handwritten document in evidence. The copy of the Condition Inspection Report (which by the Landlord's own testimony is a different document) is also missing page 3 in the Tenants' copy and on the copy the Landlord provided to the Residential Tenancy Branch.

I find on the balance of probabilities that the Tenant RB provided her forwarding address in writing at the move out inspection on May 31, 2012. The Landlord did not return the security deposit within 15 days of receipt of the Tenants' forwarding address, nor did the Landlord file for dispute resolution against the security deposit. Within 15 days of receipt.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenants are entitled to a monetary award for double the amount of the security deposit, **\$1,800.00**.

Regarding the Landlord's application:

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants agreed that they had mistakenly removed the Landlord's curtain from the rental unit. I find that the Landlord's claim in the amount of **\$40.00** is a reasonable amount, and this portion of her application is granted.

Based on the Landlord's photographs and the Tenants' CD, I find that some of the walls required painting at the end of the tenancy. Residential Tenancy Branch Policy Guideline #1 states that Landlords are responsible for painting the interior of a rental unit at reasonable intervals. Guideline 40 provides that the useful life indoor paint is 4 years. The Landlord stated that she had the paint on hand so she was not able to provide a receipt. I find that the Landlord's claim of \$50.97 is a reasonable one for the cost of the paint. I also find that the Landlord's claim of \$200.00 for her labour is reasonable. I allow this portion of the Landlord's claim in the total amount of **\$188.23** ($\$250.97 \times 3 \text{ years left} / 4 \text{ years life}$).

I find that the Landlord has not provided sufficient evidence to support her remaining claims for the following reasons:

1. Section 37 of the Act requires the Tenants to leave the rental unit reasonably clean at the end of the tenancy. Based on the video evidence provided by the Tenants, I find that the Tenants left the rental unit in reasonably clean condition. I find the Tenants' CD provides a more complete and reliable picture of the state of the rental unit at the end of the tenancy than the Landlord's photographs. For example, I accept the Tenants' testimony that the mildew was impossible to remove from the bathtub because it was underneath the caulking. This may have occurred because the walls may not have been allowed to properly dry before applying the caulking. The CD confirmed that the remainder of the tub

was sparkling clean. The Landlord's photographs were not helpful because they were close-up shots that did not provide a clear picture of the state of overall cleanliness of the bathtub.

2. The Landlord seeks a monetary award for 34.5 hours of cleaning. I find that the Landlord's claim is not supported by the Tenant's CD of the rental unit.
3. The refrigerator was already at least 10 years old at the beginning of the tenancy. Guideline 40 provides a useful life of 15 years for a refrigerator. I find that the refrigerator was nearing the end of its useful life and that there is insufficient evidence that the Tenants' negligence or abuse were responsible for its breaking down. In addition, the Landlord provided no proof of the actual cost of replacing it (for example an invoice or receipt).
4. I accept the Tenants' testimony that the drains were not clearing properly throughout the tenancy.
5. The Landlord stated that the oven was dirty at the end of the tenancy, but the Tenants' CD evidence indicates that it was clean and that the top of the stove was raised to show that even that part of the stove top was clean.
6. There is no provision in the Act for the recovery of the cost of photographs.

I find that the Landlord has established a total monetary award of **\$228.23**.

Set-off of Claims and recovery of filing fees

I hereby set off the Landlord's monetary award against the Tenants' monetary award and provide the Tenants a Monetary Order, calculated as follows:

Tenants' monetary award	\$1,800.00
Less Landlord's monetary award	<u>-\$228.23</u>
TOTAL	\$1,571.77

I order that each party bear the cost of their own filing fee.

Conclusion

The Tenants have established a monetary award in the amount of **\$1,800.00**.

The Landlord has established a monetary award in the amount of **\$228.77**.

I set off the Landlord's award against the Tenants' and hereby provide the Tenants a Monetary Order in the amount of **\$1,571.77** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: October 23, 2012.

Residential Tenancy Branch