



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for carpet 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.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on June 1, 2011 and ended on May 31, 2012 when the Tenants moved out. Rent was \$2,700.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$2,700.00 at the beginning of the tenancy.

At the beginning of the tenancy, the Parties completed a condition inspection report that included a one page, hand written addendum listing deficiencies. At the end of the tenancy, the Parties did not complete a condition inspection report but instead, the Landlord's agent made a copy of the hand written addendum to the move in condition inspection report and added some notes to it. The Landlord provided no other documentary evidence of the condition of the rental unit at the end of the tenancy.

The Landlord's agent said that the carpets in the rental unit were cleaned at the beginning of the tenancy but were not cleaned by the Tenants at the end of the tenancy. The Tenants argued that there was no term of the tenancy agreement requiring them to clean the carpets at the end of the tenancy.

The Landlord's agent said the Tenants nailed a number of pictures to a sunroom wall (which is an exterior wall of the house) and put a number of chips in the finish so that it had to be repainted. The Landlord's agent also claimed that the Tenants damaged a hallway wall with marks and dents. The Tenants denied that the entire sunroom wall needed to be painted as a result of hanging pictures. The Tenants argued that there

was no evidence of the damaged walls as alleged by the Landlord and that there were many pre-existing marks on walls throughout the rental property at the beginning of the tenancy.

The Landlord's agent claimed that the Tenants installed a frame for a baby gate in the garage without his knowledge or consent and that when it was removed, it left holes in the concrete floor, a wall and a railing post. The Landlord's agent also claimed that a wooden railing post at the top of the garage stairs was damaged beyond repair and would have to be replaced at a cost of \$532.00. The Landlord's agent further claimed that the Tenants installed a baby gate on the interior of the rental unit and left holes in the railing post that had to be repaired.

The Tenants argued that the Landlord's agent consented to them installing baby gates. The Tenants also argued that they instructed a contractor to install the baby gate in the garage in a manner that would leave little damage so that if any damage was caused by the removal of the gate, it was due to the contractor not following their instructions or alternatively due to the contractor's poor design or workmanship. The Tenants further argued that the Landlord had provided no evidence to substantiate the damages alleged. The Tenants said they did not object to compensating the Landlord for the cost to repair the interior railing post but argued that the invoice provided by the Landlord did not itemize repairs but instead charged a lump sum for a number of repairs.

The Landlord's agent claimed that the Tenants wanted a larger garbage bin at the beginning of the tenancy and that they agreed to compensate the Landlord for any additional cost. The Landlord's agent admitted that the Tenants paid the additional municipal fees for the larger bin during the tenancy but claimed that in order to return it at the end of the tenancy there would be a \$25.00 fee. The Landlord's agent also sought compensation of \$225.00 for his time to complete a form to exchange the larger garbage bin for a smaller one. The Tenants did not dispute the \$25.00 municipal fee but argued that the amount sought by the Landlord's agent for his time to complete a simple form was unreasonable and that it could be returned to the municipality by mail or fax.

The Parties agree that the Tenants gave the Landlord their forwarding address in writing by registered mail on July 19, 2012. The Parties also agree that the Landlord has not returned the Tenants' security deposit and that the Tenants did not give the Landlord written authorization to keep any of it.

Analysis

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.”

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenants caused damage to the rental unit that was not the result of reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

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. Section 20 of the Regulations to the Act sets out the information that **must** be included in a condition inspection report.

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.

Although the Landlord's agent completed a condition inspection report at the beginning of the tenancy, I find that he did not complete one at the end of the tenancy nor did he provide any other reliable documentary evidence of the condition of the rental unit at the end of the tenancy. Consequently, I find that there is very little evidence to corroborate the allegations of the Landlord. In particular, the Tenants argued that there was no damage to the sunroom wall or hallway wall that would have warranted repainting them. The Landlord claimed that there was damage in the form of many chips and other marks, however he provided no evidence of that damage other than his own handwritten notes he said he took during the move out inspection that say, “2 walls to be painted” and an invoice for painting. Given the contradictory evidence of the parties on this issue and in the absence of any additional evidence from the Landlord to resolve the contradiction, I find that there is insufficient evidence that the Tenants are responsible for the Landlord's painting expenses and that part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also claimed that the Tenants installed two baby gates in the rental property and that while the interior one left only a few small holes in a railing, the one in the garage left damage to the floor, wall and railing post. However, the Landlord's agent provided no evidence of this damage other than his own handwritten notes that say, “take out wood by stairs-repair railing/wall,” an invoice for repairing holes and an estimate for replacing a wooden post. The Tenants argued that the Landlord had provided no evidence of the damages alleged to have been caused by the removal of the baby gates. Given the contradictory evidence of the parties on this issue and in the absence of any additional evidence from the Landlord to resolve the contradiction, I find

that there is insufficient evidence that the Tenants caused damages in the garage as alleged and that part of the Landlord's claim is dismissed without leave to reapply.

However, the Tenants did not dispute that there were some small holes in the interior railing which had to be repaired and they agreed to compensate the Landlord for this repair but argued that it was not itemized on Landlord's global repair invoice. The Landlord's agent argued that in the circumstances, the Dispute Resolution Officer would have to estimate how much time it would have taken the Landlord's handyman to make this repair. With all due respect, I disagree. It is up to an Applicant to provide **all** evidence in support of their claim including proving the amount of compensation to which he or she is entitled as a result of damages; it would be contrary to the Director's role as an independent decision maker to provide that evidence in lieu of a Party. Consequently, in the absence of any evidence as to what expense the Landlord incurred for this repair, it is dismissed without leave to reapply.

RTB Policy Guideline #1 (with respect to sections 32 and 37 of the Act) says at p. 2 that a tenant is responsible for cleaning carpets at the end of a tenancy of a year in duration. Consequently, I find that it is irrelevant that the Parties' tenancy agreement did not specifically require the Tenants to clean the carpets at the end of the tenancy. However, as indicated in the previous paragraph, the Landlord's invoice for repairs included carpet cleaning but there is no indication as to how much of the total was allotted to this item. In the absence of sufficient evidence as to what expense the Landlord incurred for carpet cleaning, this part of his application is dismissed without leave to reapply.

As the Tenants did not dispute the Landlord's claim for the \$25.00 municipal fee to return a larger garbage bin, I award the Landlord that amount. However, I find that there is insufficient evidence to award the Landlord's agent compensation of \$225.00 for his time to complete a form and return it to the municipality. I find that there is no evidence that the Tenants agreed to compensate the Landlord's agent for his time to return the bin at the end of the tenancy. In the absence of any evidence of a breach of a term of the tenancy agreement or Act, I find that the Landlord is not entitled to this compensation and it is dismissed without leave to reapply.

The Landlord's agent also sought to recover his registered mail expenses to serve the Tenants with the hearing package and evidence package. However, the Act does not make provision for the recovery of costs to bring and participate in dispute resolution proceedings (with the exception of s. 72 of the Act which grants the director discretion to award a party recovery of the filing fee). Consequently, the Landlord's claim for registered mail expenses is dismissed without leave to reapply. As the Landlord has been largely unsuccessful in its application, I find that it is not an appropriate case to make the Tenants bear the cost of the filing fee paid by the Landlord for this proceeding and that part of its application is also dismissed without leave to reapply.

Section 19 of the Act says that a Landlord must not require or accept a security deposit that is greater than $\frac{1}{2}$ of one month's rent. In requiring the Tenants to pay a security deposit equal to the amount of one month's rent, I find that the Landlord contravened section 19 of the Act.

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the 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 to the Act, the Landlord's right to make a claim against the security deposit for damages to the rental unit is extinguished. In other words, the Landlord may still bring an application for compensation for damages however he may not retain the security deposit to pay for those damages. Instead the Landlord must return the security deposit to the Tenant within 15 days as provided for under s. 38.

I find that the Tenants sent the Landlord their forwarding address in writing on July 19, 2012 by registered mail. Section 90 of the Act says that a document delivered by mail is deemed to be received five days later. Consequently, I find that the Landlord received the Tenants' forwarding address in writing on July 24, 2012 but did not return their security deposit of \$2,700.00. I also find that the Landlord did not have the Tenants' written authorization to keep the security deposit. Although the Landlord's agent made an application for dispute resolution to make a claim against the deposit within the time limits required under s. 38(1) of the Act, I find that his right to do so was extinguished under s. 36(2) of the Act because he did not complete a move out condition inspection report in accordance with the Regulations to the Act. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit or \$5,400.00 to the Tenants.

I ORDER the Landlord pursuant to s. 62(3) and s. 72(2) of the Act to keep \$25.00 of the Tenants' security deposit in full satisfaction of the monetary award. The Tenants will receive a Monetary Order for the balance owing of \$5,375.00.

Conclusion

A Monetary Order in the amount of **\$5,375.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: October 16, 2012.

Residential Tenancy Branch