



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baywest Management Corporation (Agent)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on October 04, 2010 and ended on September 30, 2012. Rent for this unit was \$925.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$463.00 on September 09, 2010.

The landlord's agent RG testifies that they verbally attempted to arrange an inspection of the rental unit with the tenant on September 27, 2012. The tenants did not respond to this and the tenants were then given two further opportunities to attend an inspection of the rental unit. The landlord's agent RG testifies that he posted the first notice of inspection on the tenants' door at 1.00 p.m. on September 30, 2012. This notifies the tenants that an inspection will take place at 1.00 p.m. on that day. The landlord's agent testifies that he posted another notice of inspection on the tenants' door at 3.30 p.m. on September 30, 2012. This notice notifies the tenants that an inspection will take place at 3.30 p.m. on that day. The landlords agent RG testifies that as the tenants did not appear for the inspection the move out inspection was completed in the tenants absence and the tenants have extinguished their right to recover the security deposit. A copy of the move in and the move out inspection report has been provided in evidence along with two notices for inspection.

The landlord RG testifies that the tenants failed to clean the rental unit sufficiently. The landlord engaged a cleaner to clean the unit. This work took 12 hours at \$20.00 per hour. The landlord has provided an invoice showing these hours. The landlord seeks to retain the sum of \$240.00 for this cleaning from the security deposit.

The landlord's agent RG testifies that the tenants failed to clean the carpets at the end of the tenancy. These carpets had been new at the start of the tenancy and the landlord has provided the original invoice for the carpets dated in 2010. The landlord's agent testifies that the carpets were so dirty and stained they had to be cleaned twice. The

landlord has provided two separate cleaning invoices from the carpet cleaner showing a total amount of \$130.00. The landlord seeks to retain this from the security deposit.

The landlord's agent RG testifies that the tenants caused water damage to the vinyl flooring in the bathroom. This flooring was also new at the start of the tenancy as shown by the original receipt dated in 2010. This receipt shows that the Vinyl flooring cost \$440.00 in 2010 and the landlord has taken into account of two years of depreciation on the flooring and seeks to recover \$93.00 in compensation for the damage. The landlord's agent testifies that they did not have to replace this flooring as the new tenant accepted the flooring as is. The landlord seeks to retain this sum from the security deposit.

The landlord seeks to recover the filing fee of \$50.00 from the security deposit.

The tenant attending disputes the landlords claim. The tenant testifies that he went to the unit on September 30, 2012 to return the keys to the landlord. No prior arrangements had been made with the tenants to do the move out inspection. The tenant testifies that when he arrived at the building the landlord's agent was not there and a maintenance man informed the tenant that the landlord's agent was off as it was a Sunday. The tenant testifies that the maintenance man told the tenant that he would inform the landlords agent that the tenant had been there and told the tenant to come back the next day, the tenant testifies that he returned the next day and called the landlords agent who asked the tenant to drop off the keys in the landlords drop box. The tenant testifies he did this including dropping the laundry card and called the landlords agent RG back to inform him that the keys and card were in the drop box. The tenant testifies that at no time did RG mention doing a move out inspection. The tenant questions RG credibility as the tenant states that on the application and the bottom of the inspection reports RG has stated the tenant did not return the keys until two weeks later.

The tenant testifies that he had verbally given RG his forwarding address and the tenants received a letter from the landlord on October 05, 2012. The tenant states that this shows that the landlords did have a forwarding address for the tenants even if the tenants' had not provided it in writing.

The tenant disputes that they did not leave the rental unit clean. The tenant testifies that the unit was left very clean including all the appliances. The tenant testifies that they had shampooed the carpets with their carpet cleaner but some stains did remain on the carpets.

The tenant disputes the landlords claim for the vinyl flooring in the bathroom. The tenant testifies that one of the landlord's agents came to show the unit to a prospective tenant and when they arrived at the unit the tenants were just bathing their baby and some water was on the bathroom floor. The tenant had not had time to wipe this up when the landlord's agent looked in the bathroom and commented on the wet floor. The tenant testifies that there was no staining on the vinyl flooring and it was left clean at the end of the tenancy.

The tenant disputes the landlord's right to keep the security deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim that the tenant has extinguished their right to the security deposit because the tenants did not attend the move out inspection despite being given two opportunities for inspection; I have considered the landlords agents testimony concerning service of these inspection notices. I find that the notices were posted on the tenants' door at the same time that the inspections were due to take place, therefore not provided sufficient time for the tenants to receive the notices in order to attend the inspection. When a Notice is posted on a door this is not deemed to have been served until three days after it is posted. If the landlord wanted to carry out

the inspections at those given times then the landlord should have ensured the tenants personally received the notices. I therefore find the landlord has not provided sufficient opportunity for the tenant to attend a move out inspection of the rental unit.

With regard to the landlords claim for cleaning the rental unit; I have considered the documentary evidence provided by the landlord in the form of the condition inspection reports. In these reports the landlord has not documented that the rental unit was left in an unsatisfactory condition. In fact the landlord's agent has checked off on the report that the unit is in a satisfactory condition. The tenant disputes the landlords claim for cleaning and has testified that the unit was left in a clean condition at the end of the tenancy. Therefore when one party contradicts the testimony of the other party the burden of proof falls to the landlord to provide corroborating evidence to support their claim. As I have no corroborating evidence to show that the rental unit was not in a reasonable clean condition I must dismiss this section of the landlords claim without leave to reapply.

With regard to the landlords claim for carpet cleaning; the tenant agrees that there were some stains left on the carpets after the tenant had cleaned the carpets himself. Therefore I find a landlord is entitled to recover costs to remove these stains from the carpet by engaging a professional carpet cleaner to clean the carpets. I therefore uphold the landlords claim for carpet cleaning to the sum of **\$130.00**.

With regard to the landlords claim that the vinyl flooring in the bathroom was left stained; the tenant disputes the landlords claim and states this assumption was based on the day an agent for the landlord came to the unit and saw water on the floor after the tenants had bathed their baby. The burden of proof falls to the landlord in this matter. The landlord has documented on the move out condition inspection report that the floors in the bathroom have water stains. However as this report was conducted in the tenants absence I can place little weight on the report and the landlord has provided no other corroborating evidence such as photographs showing the stained areas of this

flooring. I therefore dismiss the landlords claim to recover compensation for the vinyl flooring without leave to reapply.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover half the filing fee to the sum of **\$25.00** pursuant to s. 72(1) of the *Act*.

With regards to the landlords claim to keep the security deposit; I find that sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the landlord to keep **\$155.00** from the tenants' security deposit to compensate the landlord for the damages and filing fee awarded.

Conclusion

I HEREBY find in partial favour of the landlords claim. The landlords are entitled to retain the sum of **\$155.00** from the security deposit. The balance of the deposit of \$308.00 must be returned to the tenants.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$308.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: April 16, 2013

Residential Tenancy Branch