



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, FF

Introduction

This hearing was scheduled in response to an application by the landlords for a monetary order as compensation for damage to the unit, site or property / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit is located in the basement portion of a house. The landlords live in the upstairs portion of the house, and they testified that they took possession of the property only a few short weeks before the start of this tenancy. Prior to the time when the landlords took possession, it is understood that the unit had been occupied as an in-law suite. It is also understood that major renovations of the house were broadly undertaken between 2003 and 2005.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on November 1, 2011. Monthly rent was \$1,350.00, and a security deposit of \$675.00 was collected. Prior to the time when the tenants had fully moved into the unit, a move-in condition inspection report was completed by the landlords without the participation of the tenants. Subsequently, the parties never met together near the start of tenancy in order to inspect the unit and compare perspectives in regard to its condition. Further, a copy of the move-in condition inspection report was not provided to the tenants until the end of tenancy.

There is no dispute that the tenants gave written notice on March 29, 2013, of their intent to end tenancy effective April 30, 2013. The landlords did a preliminary inspection of the unit on April 26, 2013 while showing the unit to prospective renters. On April 27, 2013, the following day, even while the parties were together in the unit, a

move-out condition inspection report was ultimately completed by the landlords without the full and joint participation of the tenants. This appears to have been the result of interpersonal tensions which grew between the parties towards the end of tenancy. The tenants' forwarding address is documented on the move-out condition inspection report. The tenants' security deposit was repaid by way of cheque dated April 27, 2013, and the landlords filed their application for dispute resolution on May 5, 2013. The landlords testified that new renters were found effective from June 1, 2013.

In summary, the dispute concerns costs claimed by the landlords related to cleaning and repairs.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

In relation to the particular circumstances of this dispute, the attention of the parties is specifically drawn to the following Legislation:

The Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

The Regulation:

Part 3 – **Condition Inspections** (sections 14 to 21)

In particular, section 17 of the Regulation addresses **Two opportunities for inspection**:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

- (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), **to the tenant by providing the tenant with a notice in the approved form.**

[emphasis added]

(3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

Further, section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Based on the documentary evidence and testimony, the various aspects of the landlords' application and my findings around each are set out below.

\$150.00: *clean carpets.*

Residential Tenancy Policy Guideline # 1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading **CARPETS**, provides in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet, he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The tenants testified that they undertook to clean the carpets at the end of tenancy. The landlords testified that they also cleaned the carpets at the end of tenancy as there were certain spots and stains that remained. The cost claimed is calculated on the basis of personal labour at a rate of \$20.00 per hour, in addition to supplies.

Additionally, Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of carpet is ten (10) years. The landlords were unable to confirm when the subject carpet was installed. If I find that the carpet was installed in 2005 as part of the renovations, then it follows that the carpet had endured approximately six (6) or more years of wear and tear prior to the start of this tenancy. The carpet endured a further eighteen (18) months of wear and tear during the tenancy itself. These findings in combination with the irregularities surrounding the completion of the move-in and move-out condition inspection reports, lead me to a finding that the landlords have failed to meet the burden of proving entitlement to carpet cleaning costs. This aspect of the application is therefore hereby dismissed.

\$40.00: repair hole in carpet.

The landlords testified that this repair has not been made, that the cost claimed is an estimate, and that no actual cost has therefore been incurred. In view of these facts and the irregularities associated with completion of the move-in and move-out condition inspection reports, I find that this aspect of the application must be dismissed.

\$800.00: replacement of kitchen counter top.

For reasons identical to those set out immediately above, this aspect of the application is hereby dismissed.

\$150.00: cleaning:

- \$35.00: stove and oven;*
- \$50.00: walls;*
- \$25.00: windows;*
- \$20.00: baseboards and other ledge trim; and*
- \$20.00: bathtub*

As is the case under “clean carpets” above, these particular cleaning costs reflect the landlords’ labour and calculations are based on \$20.00 per hour.

In view of the statutory provisions set out in section 37 of the Act, as above, and in consideration of the irregularities surrounding the completion of the move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$400.00: landlords' labour for painting & \$60.00: cost of paint.

As above, cost of the landlords' labour is calculated on the basis of \$20.00 per hour. There are no receipts in evidence for paint.

The tenants undertook to patch holes in the wall and to re-paint the affected walls. The tenants attempted to match the new paint with the paint already in the unit. However, the landlords were not satisfied that the colour of new paint matched the pre-existing colour of paint in the unit.

Residential Tenancy Policy Guideline # 40, as above, determines that the useful life of indoor paint is four (4) years. The landlords testified that they could not confirm when the unit had last been painted. If I find that the unit was last painted in 2005, when it is understood that renovations were completed, then the useful life of the interior paint ended in 2009, well prior to the start of tenancy. Further, I am satisfied that the tenants had no intent to act vexatiously if, indeed, there is not a perfect match between the two colours of paint. For the aforementioned reasons, and in consideration of the previously mentioned irregularities surrounding the completion of the move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$200.00: plumbing (clear clogged drain).

The landlords take the position that the tenants put inappropriate food refuse into the garburator, and that this led directly to the clogged drain and the need to summon the services of a plumber. While the landlords have included a copy of the plumber's business card, there is neither an invoice nor a written statement in evidence by the plumber which identifies the exact nature of the problem. As well, the only food item specifically identified as put into the garburator by the tenants is "broccoli stalks."

I find there is no evidence that the tenants were given specific instructions at the start of tenancy around what food refuse was not appropriate for disposal in the garburator. I also find there is insufficient evidence that the tenants were reckless in their use of the garburator. Further, I find on a balance of probabilities that the clogged drain was the result of a build up of food refuse over an unknown period of time. In short, I find there is insufficient evidence to support a claim that the tenants ought to bear responsibility for the plumbing cost. This aspect of the application is therefore hereby dismissed.

\$50.00: *filing fee*.

As the landlords have not succeeded with the principal aspects of their application, the application to recover the filing fee is hereby dismissed.

Conclusion

The landlords' application is hereby dismissed in its entirety.

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, 2013

Residential Tenancy Branch