



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on July 8, 2013, by the Landlords to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlords be granted a Monetary Order?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on December 1, 2010 and switched to a month to month tenancy after November 30, 2011. Rent began at \$1,125.00 and was subsequently increased to approximately \$1,175.00 per month. On November 4, 2010 the Tenants paid \$567.50 as the security deposit. On May 29, 2013, the Tenants provided notice to end the tenancy effective June 30, 2013. Both parties attended the move in inspection on December 1, 2010 and the move out inspection on June 30, 2013.

Upon review of the items being claimed by the Landlords the Tenants accepted responsibility for the carpet replacement of \$601.52 and the stove repair of \$99.62.

The Landlords testified that the remainder of their claim consists of \$63.80 for replacement stove drip pans; \$213.86 window blinds; \$180.00 cleaning costs; and \$54.67 for replacement of a kitchen light fixture.

The Landlords argued that their photos support their argument that the blinds were in good condition at the start of the tenancy, and the rental unit was clean. They stated that the blinds were new and the entire unit had been painted and cleaned just prior to the tenancy. They pointed to the photos they provided at the end of the tenancy to support their claims that the blinds were all damaged and had to be replaced; the stove drip pans would not come clean; and the kitchen light was broken during the tenancy. They also noted that although the Tenants did some cleaning the unit was not clean enough to be able to be re-rented.

The Tenants disputed the Landlords evidence and testimony. They stated that they had attended the move out inspection and at no time were they asked to sign the condition inspection report form. They argued that the Landlords did not tell the truth about the age of the blinds and pointed to the Landlords' photos that were taken prior to the tenancy which show that the blinds were bent from the onset. The photos even show that there was even a blind pain missing from the patio door blind. They had purchased new pains at the end of the tenancy to replace some of the broken ones. They argued that the blinds were not cut or uneven during their tenancy. They noted that they had replaced one of the bedroom blinds because it did get damaged but that the Landlord did not like the blind they had purchased because they thought it was cheap.

The Tenants pointed to their evidence which included e-mails that speak to problems they were having with the stove and other repair items. They argued that the Landlord had done some repairs to the burners which caused a couple of fires and it was those fires that blackened the drip pans. They do not believe they are responsible for claims for the drip pans which were damaged as a result of the Landlords' improper repair. Also, the kitchen light fixture and cover were replaced by the Landlord during their tenancy. Shortly afterwards the light cover simply fell off and broke. They did not break it and they simply put it back up onto the light; therefore, they do not feel they should have to pay for the light cover. They acknowledged that they did not inform the Landlord that the light cover fell off and broke.

In closing, the Landlords argued that the damage was not normal wear and tear and they could not recall if the light had been replaced during the tenancy. They do not

believe the unit was cleaned as supported by their photos and cleaning receipts which show the work that had to be done.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit needing some cleaning and with some damage at the end of the tenancy.

The Tenants have accepted responsibility for the carpet replacement of \$601.52 and the stove repair of \$99.62. Accordingly, I award the Landlords monetary compensation for the carpet and the stove repair of **\$701.14** (\$601.52 + \$99.62).

Upon review of the arguments pertaining to the claims for window blind replacements, I favor the evidence of the Tenants over the Landlords. The Landlords submitted photos that were taken prior to the start of the tenancy which, although they were taken far away from the blinds, clearly show how some of the blinds were bent and missing pains. This contradicts their own testimony that the blinds were brand new at the start of the

tenancy and were damaged during this tenancy. I accept the Tenants testimony that they repaired or replaced the blinds that were damaged during their tenancy, even though they may not have been the exact same type of blind. Accordingly, I dismiss the Landlords' claims for blind replacement costs, without leave to reapply.

There is evidence that the Landlords had been conducting repairs on the stove burners that were shorting or burning out and ultimately caused a fire. Therefore, I find there is insufficient evidence to prove the requirement for drip pan replacement was a direct result of the Tenants' failure to clean rather than a repair or maintenance issue. Accordingly, I dismiss the claim for drip pan replacement, without leave to reapply.

Upon review of the evidence for the light fixture, I find there to be insufficient evidence to prove the damage was the result of improper installation. Rather, the evidence supports that the light was installed during the tenancy and upon the move out inspection it was noted that the light cover was broken. That being said, the photos indicate that the light was a type that housed long fluorescent bulbs and the damage was caused to the cover lens. The receipt submitted into evidence was for a complete light fixture of what appears to be a different type. I do not accept the Landlords' argument that a lens cover could not be purchased and an entirely new light fixture was required. Accordingly, I dismiss the claim for a new light fixture, without leave to reapply.

By their own admission the Tenants submitted that they chose to do the cleaning themselves and they could have done a better job. I accept the Landlords' evidence which supports the amount of cleaning that was required. Accordingly, I award the Landlords cleaning costs of **\$180.00**.

The Landlord has partially been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Carpet and Stove repairs	\$701.14
Cleaning costs	180.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$931.14
LESS: Security Deposit \$567.50 + Interest 0.00	<u>-567.50</u>
Offset amount due to the Landlord	<u>\$ 363.64</u>

Conclusion

The Landlords have been awarded a Monetary Order in the amount of **\$363.64**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Province of British Columbia Small Claims Court 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 10, 2013

Residential Tenancy Branch

