



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenants' security deposit. The hearing was conducted by conference call. The landlord's agent and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to an order authorizing the retention of the tenants' security deposit?

Background and Evidence

The rental unit is a house in Vancouver. The tenancy began on May 1, 2011 for a one year term, and thereafter month to month, with rent in the amount of \$1,800.00, payable on the first of each month. The tenants paid a \$900.00 security deposit before the tenancy began.

The tenancy ended pursuant to a two month Notice to End Tenancy for landlord's use and the tenants moved out on April 30, 2013.

The landlord claimed a monetary award in the amount of \$2,416.88 for damage to the rental unit. The landlord submitted an invoice from a contractor dated May 6, 2013. The invoice was in the amount of \$2,266.88 and was said to be for the replacement of a damaged kitchen counter top, the replacement of a damaged double glazed window, replacement of seven damaged or missing window blinds, the replacement of two damaged doors and a damaged hand rail anchor. The invoice also included an \$80.00 charge for paint touch up to patched walls. The landlord claimed a further \$180.00 for garbage removal. The landlord submitted a condition inspection report with respect to

the move in condition of the rental unit. The tenant participated in and signed the move-in inspection. The tenants did not agree with the move-out inspection conducted on April 30, 2013. The landlord said there was a large hole in the kitchen counter caused by the tenants and there were missing window blinds that had to be replaced at a cost of \$738.00 and a window was cracked and had to be replaced. The landlord claimed \$650.00 for the window, but has not replaced it.

The tenants disputed all of the landlord's claims for damage to the rental property. The tenants testified that they were anxious to find a place to live in the neighbourhood of the rental property. When the house became available they agreed to rent it despite the fact that it was in deplorable condition. The house was infested with mice and there were rodent droppings everywhere. The kitchen was filthy and covered with grease and there was black mould on the windows and the stove was so dirty and full of mouse droppings that it had to be replaced. The tenants had to perform extensive cleaning to make the house habitable. The landlord agreed to reimburse the tenants \$300.00 for cleaning and the parties signed a lease addendum to that effect on May 3, 2011. The tenants said that there was an ongoing rodent problem throughout the tenancy. There were electrical and other issues and the tenants had great difficulty getting the landlord to address needed repairs and problems with the rental property. The tenants submitted as evidence copies of their phone records and text messages to show the frequency of calls to the landlords and their agent. The tenants said the rodent problem was never solved. There were problems with a leaking roof throughout the tenancy. The tenants testified that the landlord used unqualified people to perform work on the house and many of the attempted repairs were ineffectual and incompetently performed. With respect to the specific claims, the tenant said that there was a hole in the counter top next to the sink because the counter surface was worn and porous and water penetrated the countertop, rotting the wood substrate and creating a hole. The tenants denied responsibility for a cracked window. The landlord did not submit evidence as to the cause of the cracked window, but provided some photographs purporting to show the cracked window and the unbroken window prior to the commencement of the tenancy; I was unable to determine from the landlords' photos whether or not the window was cracked at the outset of the tenancy.

The tenants testified that the blinds claimed as missing by the landlord were either not present initially, or they had been taken down because they were dirty. The tenants testified that all the blind that had been taken down were left at the rental unit when the tenancy ended. The tenants disputed the landlord's claim for replacement window blinds. They said that they took down blinds because they were not in suitable condition to be used. The tenants acknowledged damaging one door in the rental unit when moving.

The tenants submitted a quantity of photographs that showed the condition of the rental unit at the start of the tenancy. They relied on the photographs to show how extremely dirty the rental unit was; the extent of the mouse droppings and mould that was present and the amount of cleaning that had to be done to make the rental unit habitable. The tenants said that the rental unit was left in much better condition than it was received when the tenancy began. The tenants said that the garbage that the landlord claimed for removing consisted of items that were left in the rental unit when the tenancy began. The tenants disagreed with the landlord's move-out inspection and did not sign it.

Analysis

The tenants' evidence has satisfied me that the house was in a dilapidated and neglected state at the start of the tenancy and that the tenants expended significant efforts to clean it and make it liveable. I accept the tenants' testimony that the problem of the hole in the kitchen counter was due to the rotting and disintegration of the counter near the sink due to moisture and that it was not due to any damage or neglect caused by the tenants. I accept that the landlord made minimal efforts to keep up the property during the tenancy and responded to the tenant's requests for repairs reluctantly and half-heartedly. I accept the tenants' testimony that there were window blinds that the tenants took down and left in a utility room because they were dirty or otherwise unfit for use. I do not accept the landlord's claim that the tenants are responsible for replacing the blinds. With respect to the cracked window, the evidence presented by the landlord failed to establish on a balance of probabilities that the window was cracked during the tenancy due to the actions or carelessness of the tenants. I find that the landlord has not shown that the tenants should be responsible for the cost to replace the window and this claim is denied. I note that the landlord has not replaced the cracked window.

With respect to the rail anchors, the tenants said the hand rail was wobbly during the tenancy; I do not accept that this repair is the responsibility of the tenants. The landlord did not submit evidence that showed the tenants left behind items that would justify a \$180.00 claim for garbage removal. I accept the tenants evidence that there were cast offs left in the lower part of the house when the tenancy started.

The landlord claimed for paint touch up, but the evidence is that the tenants did some necessary painting during the tenancy and if there was some touch up required at the end of the tenancy, including painting some patched areas, I find that it falls under the category of reasonable wear and tear for which the landlord is responsible. The tenants testified that the original paintwork was not in great shape and in some locations the

paint was chipping because proper preparation was not done before paint was applied; for example paint was applied overtop of old stickers on the walls.

I find that the landlord is entitled to an award of \$90.00 for the replacement of one door damaged by the tenants. All other claims by the landlord are dismissed without leave to reapply. I decline to award a filing fee for this application.

Conclusion

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been dismissed, save for an award of \$90.00 without leave to reapply it is appropriate that I order the return of the balance of tenants' security deposit with interest; I so order and I grant the tenants a monetary order in the amount of \$810.00. This order may be registered in the 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: September 16, 2013

Residential Tenancy Branch

