



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD
MNDC, MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and retention of all or part of the security deposit; and ii) by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from January 1 to December 31, 2013. Monthly rent of \$2,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,100.00 was collected. A move-in condition inspection report was not completed.

Pursuant to a "mutual agreement to end a tenancy" form, tenancy ended September 1, 2013. By email dated August 31, 2013, the tenants informed the landlords of their forwarding address. A move-out condition inspection report was not completed.

The landlords filed their application for dispute resolution on September 12, 2013, and mailed a cheque to the tenants for the partial reimbursement of the security deposit in the amount of \$110.60 on September 13, 2013. The landlords presently retain \$989.40 of the original security deposit (\$1,100.00 - \$110.60). The tenants filed their application for dispute resolution on September 20, 2013.

Analysis

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

At the outset, the attention of the parties is drawn to the following sections of 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**

Further, section 37 of the Act addresses **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
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

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

LANDLORDS

In their original application, the landlords sought compensation in the total amount of \$1,290.40, which was comprised of labour, certain supplies and various replacement parts. However, the landlords amended their application and confirmed that they now seek compensation in the reduced total amount of \$989.40, as below.

\$15.06: re-keying lock(s)

I find that all keys provided by the landlords at the start of tenancy were not returned at the time when the tenants vacated the unit, which was on or about September 1, 2013. Rather, a week or two passed before all keys were returned. In the result, I find that it

was reasonable for the landlords to undertake to re-key the lock(s). Accordingly, I find that the landlords have established entitlement to recovery of the full amount claimed.

\$52.41: replacement of damaged bathtub stopper

The tenant testified that the bathtub was not used during the tenancy, and that he was unaware of any problem with the bathtub stopper. In the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim, and it is therefore dismissed.

\$321.93 (\$108.12 + \$213.81): cleaning and painting supplies

\$300.00: painting walls

\$300.00: general cleaning

The tenant testified that he undertook to clean the unit thoroughly before vacating. However, the tenant also acknowledged that certain cleaning was not completed; this included, but was not necessarily limited to, behind and beneath large appliances, and the filter in the hood above the kitchen stove. Evidence submitted by the parties includes photographs by the landlords and a USB device / memory stick by the tenants. Again, as noted above, a unit must be left “reasonably clean and undamaged.” In the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlords have established entitlement limited to **\$175.00**.

The landlords have not applied to recover the filing fee.

Sub-total entitlement: \$190.06 (\$15.06 + \$175.00)

TENANTS

\$1,500.00 (6 x \$250.00): loss of use of dishwasher for 6 months

During the hearing the parties agreed that the period of time in question is actually nearer to 5 months, rather than 6 months.

The landlords testified that the dishwasher was approximately 18 months old at the time when the subject tenancy began. Further, the landlords testified that a technician informed them that the dishwasher did not function as a result of “improper use.” However, there is no documentary evidence before me from the technician, and neither a move-in nor move-out condition inspection report was completed. In short, I find there

is insufficient evidence to support a claim that the tenants were responsible for the broken dishwasher. Further, I find that the absence of a functioning dishwasher diminished the value of the tenancy in the amount of **\$187.50**. This entitlement is calculated on the basis of \$1.25 per day x 150 days (5 months x @ 30 days per month).

\$1,500.00: compensation for personal injury arising indirectly from not having a dishwasher available (reduced to \$750.00 during the hearing)

I note comments on the Emergency Department Chart concerning the tenant's injury:

Presents with laceration caused by a knife. Was reaching into a drying rack and knife was pointing upwards.

The tenant testified that had the dishwasher worked, there would have been no need to wash dishes and cutlery in the sink, and place them in a drying rack on the kitchen / sink counter. Rather, the tenant infers that dishes and cutlery would have been put into the dishwasher, thereby precluding the risk of such injury. However, I find that the positioning of the knife in the drying rack led directly to the tenant's injury, and I find that the injury was insufficiently related to a broken dishwasher to form the basis of grounds for entitlement to compensation. This aspect of the application is therefore dismissed.

\$1,000.00: frequent eating out as a result of not having a dishwasher

I find that the absence of a functioning dishwasher is insufficiently related to the tenants' decision to eat out more often. While the absence of a functioning dishwasher resulted in inconvenience, the tenants have established entitlement to related compensation, as above. Despite this, there is no evidence that the tenants were unable to prepare meals in the unit or wash dishes in the sink. This aspect of the claim is therefore dismissed.

\$17.50: stop payment fee for post-dated rent cheques

I find that the landlords returned the tenants' post dated rent cheques around mid-September 2013, and there is no evidence of the landlords threatening to cash the cheques. In the result, I find that the tenants have failed to meet the burden of proving entitlement to recovery of this cost, and this aspect of the claim is dismissed.

\$10.78: *registered mail costs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, this aspect of the tenants' claim is dismissed.

\$50.00: *filing fee*

As the tenants have established some measure of success with their application, I find that they have established entitlement to recovery of the filing fee.

Sub-total: \$237.50 (\$187.50 + \$50.00)

Conclusion

I order that the landlords retain **\$190.06** from the original security deposit of \$1,100.00.

I order that the landlords repay the balance of the security deposit of \$909.94 (\$1,100.00 - \$190.06) **minus** the amount already paid of \$110.60, for a total of **\$799.34** (\$909.94 - \$110.60).

I further order that the landlords pay the tenants the additional amount to which the tenants have established entitlement which is **\$237.50**, leading to a total amount owed to the tenants of **\$1,036.84** (\$799.34 + \$237.50).

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,036.84**. Should it be necessary, this order may be served on the landlords, filed 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: December 19, 2013

Residential Tenancy Branch

