



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenant and by the landlords. The tenant applied for the return of her security deposit, including double the amount of the deposit. The landlords applied for a monetary award, including amounts for the cost of cleaning and repairs and for an order to retain the tenant's security deposit in partial satisfaction of the claim. The applications were heard together by conference call hearing. The landlords and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of her security deposit including double the amount?

Are the landlords entitled to a monetary award for the cost of repairs, cleaning and loss of rental income and if so, in what amount?

Background and Evidence

The rental unit is a suite in the landlords' house in Port Moody. The tenancy began in February 2013. The tenant paid a security deposit of \$475.00 at the start of the tenancy. The tenant paid rent for August and moved out at the end of August. The tenant said that she gave the landlord a forwarding address by e-mail and later when she signed a condition inspection report and returned it to the landlord with her forwarding address. The tenant received an e-mail message from the landlord that stated as follows:

When we met on September 1, 2013 to do the inspection of the suite, we never ended up reviewing the actual Condition Inspection Report or filling it out. I would like to setup an appointment with you to review and sign the document.

Alternatively, you may choose to simply print the attached scanned copy of the Condition Inspection Report, complete and sign it and return it to me.

Once I receive the completed report signed by you, I will deem there to be written notice of your forwarding address.

The tenant submitted a copy of the condition inspection form; she signed the form and authorized the landlords to retain the sum of \$125.00 from the security deposit. The tenant provided a forwarding address on the form. The landlord acknowledged that he received a copy of the document on September 14th. The landlords responded to the tenant by e-mail on September 15, 2013. In the e-mail message they said that they would not be returning any portion of the tenant's security deposit because they contended that the cost to clean and repair the rental unit exceeded the amount of the deposit. The landlords said that the amount of \$125.00 that the tenant agreed to allow the landlords to keep was not sufficient and they said that if the tenant did not agree to forfeit the whole of her deposit they would proceed to make a claim against her for: "the full cost of all repairs."

On October 9, 2013 the tenant submitted an application for dispute resolution to claim her security deposit of \$475.00, including double the amount of the deposit. On October 17, 2013 the landlords filed their application to claim a monetary order for cleaning and repairs in the amount of \$1,805.00 and for an order to retain the security deposit in partial satisfaction of the claim.

As set out in the Application, The landlords claimed the following amounts:

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| • Cost to repair damaged bedroom floor: | \$640.00 |
| • Repairs to damaged baseboards and walls: | \$390.00 |
| • Cleaning replacing mould damaged caulking: | \$130.00 |
| • Kitchen cabinet door damage: | \$110.00 |
| • Lack of basic cleaning: | \$60.00 |
| • Loss of ½ month's rental income: | \$475.00 |

The landlord submitted a number of photographs, a written statement from a building contractor, copies of e-mail exchanges, the condition inspection report and invoices for materials and services rendered.

In his statement the landlords' building contractor said that the laminate floor in the bedroom was damaged in several places where the finish was removed. He stated his

opinion that the damage was caused by unprotected furniture legs on the tenant's bed. According to the contractor, because the floor was made from glued laminate boards, a substantial section of flooring needed to be removed and replaced to repair the damage.

The contractor also commented on a damaged kitchen cupboard door. He said the door appeared to have a broken style joint and scratches through the finish caused by scraping against the adjoining door.

The contractor referred to the fibreglass shower pan. He said that the caulking sealant between the pan and the wall tile was discoloured due to mould. He said the sealant had to be removed and replaced because it was permanently stained. He said that he or his subcontractors performed these repairs as well as filling, sanding and painting.

The tenant acknowledged that she caused damage to the bedroom floor, but she disputed the amount claimed by the landlord. The tenant said she had someone who would have repaired the floor on her behalf, but the landlords did not let her go ahead and do the repair. With respect to other claims by the landlords, the tenant noted that she had complained about a mould issue in the shower early in the tenancy in May and she referred to messages exchanged with the landlords about inspecting the shower and products for mould removal. She said the matter was never resolved satisfactorily and the mould issue was a pre-existing problem and not her responsibility. The tenant said that damage to the kitchen cupboard door amounted to normal wear and tear; she referred to a statement she obtained from a woodwork design firm. The proprietor said the landlords' picture of the cupboard showed what appeared to be a starved glue joint that allowed the style to expand from the rail. He suggested that the rub marks in the finish were due to a design flaw and were caused by a protruding screw head that should have been countersunk to make it flush with the door.

The tenant also said that she left the rental unit reasonably clean at the end of the tenancy. At the hearing she disputed all of the landlords' claims, including the claim with respect to the floor damage because she was not given an opportunity to have someone repair the damage.

Analysis

I accept the landlords' evidence that the tenant caused damage to the floor due to the failure to use adequate protection under the furniture legs. The tenant acknowledged responsibility for the damage in her e-mail exchanges and in the condition inspection that she signed wherein she agreed that the landlord could keep \$125.00 of her security

deposit on account of the damage. I do not agree with the tenant's position that she should not be responsible for the cost of the floor repairs because she was not allowed to pursue her own arrangements to carry out the repairs. The landlord is not obliged to let the tenant perform repairs or to choose the contractor who will perform the repairs after the tenancy has ended. I allow the landlords' claim with respect to the damaged floor.

I do not accept the landlords' claims that the tenant should be liable for a damaged kitchen cabinet door. The tenant's evidence is that damage to the door was due to reasonable wear and tear, or that it resulted from a design flaw and a badly glued joint. The tenant's explanation of the damage is plausible and I find that the tenant is not responsible for the repairs because it may have resulted from an inherent flaw and in any event amounted to normal wear and tear.

With respect to the claim for mould in the shower, I note that the tenant raised the issue early in the tenancy and consulted the landlord about the difficulty she had removing mould in the shower. I do not find that the tenant is responsible for the recaulking because the staining and need for replacement of the silicone sealant was inevitable and constitutes reasonable wear and tear.

I do not allow the landlords' claim for repairs to damaged baseboards and walls. There were marks and holes in the walls noted in the move-in condition inspection report as well as some holes, dirt and stains to the baseboards. I regard any additional marks to amount to reasonable wear and tear and therefore not compensable.

I do not allow the claim for lost rental income. The landlords did not provide evidence to show what steps they took to re-rent the unit; further, I do not regard the floor damage to be so serious that it precluded the rental of the unit or justified a delay in renting the unit for the repairs to be completed.

Based on the landlords' testimony and the photographic evidence provided, I find that the tenant did not perform an adequate cleaning at the end of the tenancy. The landlords' photographs show that there were obvious deficiencies in the cleaning when the tenant moved out. I award the landlords the sum of \$60.00 for additional cleaning. I allow the landlords' claim for repair of the damaged floor in the amount of \$640.00, as requested.

With respect to the tenant's claim, she has requested payment of double her security deposit of \$475.00 because the landlord did not return her deposit or file an application to claim the deposit within 15 days of receiving her forwarding address.

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The landlords received the tenant's forwarding address when they received the signed condition inspection report by e-mail attachment on September 14, 2013. They did not file their application for dispute resolution until October 17, 2013, well outside the 15 day period. The landlord testified at the hearing that the delay was due to continuing negotiations over the damage deposit. From the tenants standpoint, she stated her position when she signed and returned the condition inspection report authorizing the landlord to retain \$125.00 from her security deposit; there is no exception in the *Residential Tenancy Act* to extend the time because the landlord wishes to continue negotiations; the landlord's option is to return the balance of the deposit or make an application to claim it.

The tenant claimed double the amount of her \$475.00 deposit. I find that the tenant is entitled to double the amount of her deposit, but the deposit that should be doubled is the balance of the deposit less the amount she authorized in writing that the landlord was entitled to retain, which is the sum of \$350.00. Double the amount of the deposit is therefore the sum of \$700.00. The tenant is entitled to recover the \$50.00 filing fee for a total award of \$750.00.

I have awarded the landlord the cost of floor repairs in the amount of \$640.00 plus cleaning costs of \$60.00 for a total of \$700.00. From that amount must be deducted the sum of \$125.00 which the tenant authorized the landlord to retain from the security deposit, leaving a balance of \$575.00. The landlord is entitled to recover the \$50.00 filing fee for his application for a total award of \$625.00.

Conclusion

Section 72 of the *Residential Tenancy Act* allows me to set off the award granted to the landlord against the amount that is due to the tenant. When the amounts are set off

there is a net amount due to the tenant of \$125.00 and I grant the tenant an order under section 67 in the said amount. 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: January 29, 2014

Residential Tenancy Branch

