



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0796134 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF, OLC

Introduction

This hearing dealt with applications by both the landlord and the tenant. The landlord applied for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement and to recover the RTB filing fee. The tenants applied for an order that the landlord comply with the Act, Regulation, or tenancy agreement, that the landlord return all or part of the security deposit, and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?
Is the tenant entitled to the return of all or part of the security deposit?

Background and Evidence

The parties agree they entered into a tenancy agreement starting December 1, 2012 and ending December 31, 2013. The tenant was obligated to pay rent of \$1,850.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$925.00.

The parties agree that they did not complete either a move-in Condition Inspection Report or a move-out Condition Inspection Report.

The landlord claims that the tenant caused damage, including the following problems that the landlord seeks compensation for:

<i>Landlord Claim</i>	<i>Amount</i>
Replace kitchen sink	555.00
Replace drywall, tiling, etc due to water leak	2,600.00
Loss of rent due to repairs from water leak	925.00
Damage to vacuum system and walls	250.00
<i>Total Claim:</i>	<i>4,330.00</i>

Kitchen Sink:

The landlord claims that after the tenants moved out he discovered that a round hole had been cut in the side of the stainless steel double sink and the metal circle had then been re-attached in the hole in a manner that left sharp edges. His evidence is that since the sink could not be repaired, he had to replace it at a cost of \$555.00. The landlord provided a photo of a sink sitting outdoors on some pavement. A circle can be seen on the right wall of the right-hand sink. The landlord also provided an invoice from "M.S. Maintenance" which includes a charge "supply and install new stainless steel kitchen sink" for \$555.00. The landlord's evidence is that "M.S. Maintenance" is a local contractor and is at "arm's length" from the landlord.

The landlord's evidence is that the repaired hole in the sink resembled some holes in the bathroom walls that also appeared during the tenancy.

The tenant gave the following evidence regarding the kitchen sink:

- We did not cut a hole in the sink
- "Why would we?"
- We would have seen it
- If we did something wrong and repaired it, why wouldn't we have also repaired the other holes [in the bathroom walls]?
- We did no repairs to anything
- I am not sure the sink in the photos is the same sink [as was installed in the kitchen during the tenancy]
- (Asked if the tenant would have noticed the repaired hole in the sink) I personally washed the sink with my bare hands, I would have felt it. We would have asked for a new sink.

The landlord's position is that he would not take a picture of a different sink with a hole in it, for the purpose of making a claim.

Damage resulting from water leak:

The landlord gave evidence that there was a water leak in the walls during the tenancy, which resulted in the landlord having to repair and replace drywall and tiling. The landlord's evidence is that the water leak itself would not have been apparent to the tenants. However, his evidence is that he discovered the existence of the leak in early January 2014 (within two weeks of the end of the tenancy) when he noticed a wet area on the carpet about 3' by 3 or 4' in size in a room which is about 9' x 10'. The wet area led him to investigate, and eventually discover the water leak in the wall. The landlord's position is that the tenant must have noticed the wet carpet and failed to advise the landlord of the problem. As a result, the leak continued for a longer period than it would have if the tenant had advised the landlord promptly. Since the leak continued for a longer period, more damage was done and greater repairs were necessary.

The landlord claims \$2,600.00 in repair costs and \$925.00 in lost rent (one half month) due to the time it took to repair the problem. The landlord provided an invoice from M.S. Maintenance dated January 30, 2014 which lists work done, including work to remove and replace rotten wood and install a new shower. The fee for the work totals \$3,960.00; the landlord claims \$2,600.00 from the tenants.

The tenant gave the following evidence regarding the water leak, in the following order:

- The landlord's version of events is a "strange story"
- The landlord did not see the wet carpet himself initially
- We did not notice any water damage
- Why wouldn't we tell him?
- I had my desk, files, and paperwork in that room; some of it was on the floor
- I was using the room on a daily basis and I did not notice the problem
- There was no leak on the carpet
- My seat was next to the wall; I would have noticed

Other Damage Claims:

The landlord also claims \$250.00 in compensation for the following issues: the built-in vacuum system was broken, the tenant installed a crooked row of wall hooks, a hole was drilled into the wall of each bathroom near the toilet, and a panel is missing from a box built into a corner of a room to enclose what appear to be some pipes. The landlord

provided photos in support of each of these problems. The landlord also gave evidence of other problems. However, he does not make a monetary claim regarding any other issues and so I have not summarized evidence regarding any other issues.

Regarding the built-in vacuum system, the landlord's evidence is that he always checked the vacuum system between tenants and the vacuum system worked prior to this tenant. His evidence is that he found paper stuffed in the vacuum system after the tenancy.

The tenant's evidence is that they did not use the vacuum system during the tenancy. Instead, they hired a maid who brought her own vacuum cleaner.

Regarding the holes in the bathroom walls, the landlord said that a quarter-sized hole was drilled in the wall of each of the three bathrooms near the toilet. His evidence is that the holes were not there prior to the tenancy.

The tenant's evidence is that the holes were already in the bathroom walls at the start of the tenancy. He states that if they had made the holes, they would have fixed them before they left. His evidence is that it "could have been a previous tenant".

Regarding the wall hooks, the landlord said they were installed beside the furnace. His evidence is that the drywall had to be patched and repainted when they were removed.

The tenant's evidence is that the wall hooks were already there when the tenants moved in.

The landlord gave evidence that he used to live in the rental property and is very familiar with it. His evidence is that he showed the tenants the property himself and would have observed if any of these problems existed before the tenancy.

Analysis

The process for the return of security deposits is set out in Section 38 of the Act. Pursuant to Section 38(1), the landlord must either repay the security deposit or apply for dispute resolution to make a claim against the security deposit within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing (whichever is later). Alternatively, pursuant to Section 38(4)(a), a landlord may retain all or part of a security deposit if the tenant agrees in writing.

In this case, the tenancy ended on December 31, 2013 and the landlord applied for dispute resolution to make a claim against the security deposit within 15 days. However, the landlord's right to claim against the security deposit is extinguished by Section 36(2)(a), since the landlord did not provide the tenant with two opportunities to conduct a move-out inspection. Accordingly, the landlord must return the security deposit of \$925.00 to the tenants.

Despite this, the landlord is entitled to make a claim for monetary compensation for damage to the suite. The security deposit due to the tenants may be set off against any money due to the landlord.

Overall, I prefer the evidence of the landlord to that of the tenant. I did not find the tenant to be a credible witness. There were at least two aspects to the tenant's evidence that caused me to be concerned about his credibility. First, he tended to overstate his position by giving multiple and sometimes contradictory explanations for the damage. For example, within a few minutes the tenant asserted they did not damage the sink, they would have noticed if the sink was damaged, if they had damaged it and repaired it then why wouldn't they have repaired the other holes they were alleged to have caused, they did not repair anything, and he was not sure the sink in the photo was the same sink. My impression was that the tenant "doth protest too much" and this caused me to doubt the sincerity of his denial.

As well, the tenant's evidence seemed at times evasive. For example, he asked seemingly rhetorical questions such as "why would we do that" followed by speculating that if they had done the damage they would have repaired it. The tenant also seemed evasive when he started his response to the landlord's description of the water leak by describing the landlord's description as a "strange story" rather than by simply stating he did not notice the wet carpet.

Although the parties did not complete a Condition Inspection Report, I am persuaded that the landlord is sufficiently familiar with the rental property to have observed what issues, such as holes in walls, existed prior to the tenancy. I also found the landlord's position to be more plausible than that of the tenant. For instance, the contractor's invoice provides evidence that the landlord did replace the stainless steel sink. It seems implausible that the landlord would have replaced a sink that was not damaged. For that reason, I accept the landlord's evidence that the sink was damaged. Since I found the landlord to be a more credible witness, I find that the sink was damaged during the tenancy and the landlord is entitled to compensation for its replacement.

Based on my analysis of credibility, I also prefer the landlord's evidence regarding the \$250.00 claim for the broken vacuum system, wall hooks, holes in bathroom walls, and missing panel. I find the tenants are responsible for those damages and the landlord is therefore entitled to compensation. Although the \$250.00 figure appears to be a nominal amount rather than an actual estimate of the cost of damage, I find the amount to be a reasonable amount of compensation for those issues.

Based on my analysis of credibility, I find it is possible that the tenant did notice that the carpet in the office was wet and failed to report this to the landlord. However, I find that the landlord has not proven this claim on a balance of probabilities for the following reasons. The landlord did not provide any expert evidence to support how long the pipe had been leaking in the wall when the leak was discovered, or at what point the leaking pipe would have resulted in a wet carpet in the office. For that reason, I am unable to determine when the carpet would have become wet enough for the tenant to have noticed.

Even if there were enough evidence to establish when the tenant should have become aware of the issue, there is not sufficient evidence to know how much (if any) money and time could have been saved if the problem had been discovered and addressed sooner. It is too speculative to say that the tenant must have noticed the wet carpet at a particular point in time and the tenant's failure to report the wet carpet at that time cost the landlord about \$2,600.00 and a half month's repair time. For those reasons, I dismiss the landlord's claim for \$2,600.00 in repair costs and \$925.00 in lost rent.

The landlord has proven some of his claim and is entitled to recover his filing fee from the tenants. The amount due the landlord is therefore \$555.00 (sink), \$250.00 (various damage), and \$50.00 (filing fee), which totals \$855.00.

Since the landlord had already applied to retain the security deposit, it was not necessary that the tenants apply for the return of their security deposit. For that reason, the tenants are not entitled to recover their filing fee.

The total due the tenants is \$925.00 and the total due the landlord is \$855.00. Setting these awards off against each other results in an amount due the tenants of \$70.00. I grant the tenants a monetary order for that amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenants a monetary order for \$70.00.

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: April 09, 2014

Residential Tenancy Branch

