



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with two related applications. Both were applications by the parties for a monetary order either returning the security deposit to them or allowing them to retain the security deposit. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced June 1, 2013 and ended May 31, 2013. The monthly rent of \$1700.00 was due on the first day of the month. The tenancy agreement specified that \$800.00 was paid for a security deposit and \$200.00 was paid for a pet damage deposit. Although the correspondence between the parties shows some variation in the allocation of the \$1000.00 between the security deposit and pet damage deposit, it is agreed that the tenants paid \$1000.00 for deposits.

The rental unit is three story town house built in 2004.

A move-in inspection was conducted and a move-in condition inspection report completed. It is common ground that the landlord was only present for part of the inspection and that he trusted the male tenant to complete. The tenant's evidence is that the male tenant spent about three hours completing the inspection and the condition inspection report. The evidence is also clear that he was very thorough. The completed condition inspection report was sent to the landlord, who never did sign it.

The male tenant did not note a mark in the stippled ceiling in a room in the lowest level of the home. The tenants say that this lever was the last prt of the unit that the male tenant inspected; he was tired and frustrated; and there is no box for "ceiling" in the basement section of the form. The landlord points out that "ceiling" is included in every other section of the form and the male tenant made notes about the ceiling in other rooms.

A move-out inspection was conducted and a move-out condition inspection report completed on May 31. A mark on the stippled ceiling was noted. The tenants signed the report with the box "I agree that this report fairly represents the condition of the rental unit" checked. The landlord's agent, who conducted the move-out inspection on the landlord's behalf, told the tenants that by signing they were just agreeing to the fact that there was a discrepancy between the move-in and move-out reports.

The ceiling is an unpainted stipple ceiling; about ten feet by fifteen feet. The landlord had the ceiling repaired on July 5, 2014 at a total cost of \$577.50. the contractor patched and retextured only a portion of the ceiling and was able to successfully blend the new stipple with the existing stipple. The landlord reported that the repair looks great.

The tenants argue that the landlord had large floor-to-ceiling furniture in this room before they moved in; the mark is consistent with being scraped by a piece of furniture; and had they realized they were going to be responsible for this repair they could have fixed it themselves for a few dollars. The tenants' evidence is that all they ever had in this room was a desk and their children's' toys.

The landlord acknowledged that they did have large furniture in this room and that they had helpers when they moved out. He emphasized the male tenant's thoroughness in preparing the move-in condition inspection report as proof that the mark was not there at the start of the tenancy.

The landlord claims \$155.95 for carpet cleaning. The tenants argue that the unit was not clean when they moved in; the tenancy agreement does not require them to clean the carpets at the end of the tenancy; and the tenancy agreement specified that their dog was not allowed on the carpet.

The tenants provided their forwarding address in writing to the landlord on the move-out condition inspection report. The landlords filed their application for dispute resolution claiming against the security deposit on June 13 and sent a cheque to the tenants for \$300.00 on the same day.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The expected useful life of drywall is twenty years. Although there is no specific entry for ceiling stipple I find that it is analogous to drywall and apply the same standard to it. The rental unit is ten years old so the depreciation rate to be to the claim for ceiling repair is 50%.

A properly completed move-in or move-out condition inspection report is given great evidentiary weight by section 21 of the *Residential Tenancy Regulation* which provides that in a dispute resolution proceeding, a condition inspection report completed in accordance with the legislation is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 23 of the *Residential Tenancy Act* requires a condition inspection report to be signed by both parties and section 20 of the *Residential Tenancy Regulation* requires a condition inspection report to contain the date of the condition inspection.

The move-in condition inspection report was unsigned; the move-out condition inspection report was undated. Neither is a report completed in accordance with the legislation. This does not mean that the reports have no evidentiary value; only that they do not have the same evidentiary presumption as a properly completed report.

The photographs filed by the landlord show a scrape that is consistent with the ceiling being caught by the corner of a large piece of hard furniture that has been raised while it is being moved.

The evidence is that the landlords had large pieces of furniture in this room; the tenants did not. The tenants' explanation for how the damage occurred is just as plausible as the landlords. Therefore, I find that the landlords have not established, on a balance of probabilities, that the damage or loss is solely attributable to the actions of the tenants. The landlords' claim for the ceiling repair is dismissed.

With regard to the landlords' claim for carpet cleaning, *Residential Tenancy Policy Guideline 1: Landlord and Tenant- Responsibility for Residential Premises* explains the standard that will be applied to landlords and tenants by an arbitrator. The *Guideline* states that a tenant will be held responsible for steam cleaning or shampooing the carpet at the end of a tenancy of a year or more. Accordingly, I allow the landlords' claim for carpet cleaning in the amount of \$155.95.

With regard to the security deposit section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. In this case the landlords filed their application for dispute resolution claiming against the security deposit within the fifteen day time limit and therefore are not subject to the section 38(6) penalty.

The tenants also claimed the cost of registered mail. The *Act* does not allow an arbitrator to award any party the costs of preparing or serving their application for dispute resolution or evidence. This part of their claim is dismissed.

As both parties were partially successful on their respective applications no order with respect to the filing fees paid by both will be made.

In conclusion I have found that the landlords are entitled to payment of \$155.95 from the tenants and I order that they may retain that amount from the security deposit in full satisfaction of their claim. The balance of \$544.05 must be returned to the tenants and a monetary order, pursuant to section 67, in that amount is granted to the tenants.

Conclusion

After setting off a monetary order in favour of the landlords a monetary order in favour of the tenants has been granted. If necessary, this order may be 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: September 19, 2014

Residential Tenancy Branch

