



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MND, MNSD, FF, O
 TENANT: MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenant's security and pet deposits, to recover the filing fee for this proceeding and for other considerations.

The Tenant filed for the return of double the security and pet deposits and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on July 10, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on July 15, 2014, in accordance with section 89 of the Act.

The Landlord and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenants' deposits?
4. What other considerations are there?

Tenant:

1. Are the Tenants entitled to recover double the security and pet deposits?

Background and Evidence

This tenancy started on December 22, 2014. The tenancy agreement indicates it started on December 28, 2013 as a fixed term tenancy with an expiry date of June 28, 2014. Rent was \$2,350.00 per month payable in advance of the 28th day of each month. The Tenant paid a security deposit of \$1,175.00 and a pet deposit of \$500.00 on November 27, 2013.

The Landlord said the rental unit was freshly remodeled prior to the Tenants moving in. A move in condition report was completed and signed on December 22, 2013 and a move out condition report was completed on June 28, 2014. The Tenants signed the move in report as agreeing to it and the Tenants did not agree with the move out condition inspection report.

The Landlord continued to say that the Tenants damaged the rental unit and although the Tenants attempted to repair the damage their repair work actually made the damage worse. The Landlord said the Tenants' parked an RV vehicle on the driveway and drippings from the RV discoloured the driveway. The Landlord said the Tenants cleaned the driveway, but the product they used has caused damage to the driveway and now the Landlord has to resurface the entire driveway. The Landlord is requesting \$2,230.16 in driveway repairs. The Landlord submitted an estimate for the work and said the work has not been completed at this time.

In addition the Landlord said she is claiming \$448.00 to repair stains to the granite countertops. The Landlord said the Tenants were told not to leave olive oil on the granite because it will stain granite. The Landlord said she saw olive oil bottles on the granite and this resulted in stains in the countertops. Despite the Tenants trying to clean the stains the landlord had to hire a contractor to clean and repair the countertops. The Landlord said she paid \$448.00 to remove the stains and she submitted a paid receipt.

The Landlord said she is also claiming \$500.00 for the insurance deductible that she had to pay as a result of a flooding issue caused by the Tenants' son and \$500.00 that she has estimated to be the increase in her insurance premiums as a result of the insurance claim. The Landlord said she has not paid the increased insurance premium yet as it will be due in mid-2015.

The Landlord continued to say that she is also claiming \$650.00 which is the estimated cost to repair scratches in the wood flooring. The Landlord said the work has not been done as of yet.

The Landlord also submitted a paid receipt for \$50.00 which is the cost of doing the estimate to repair the driveway.

The Tenants said they gave the Landlord written notice to end the tenancy on May 28, 2014 for June 28, 2014. The Landlord said she accepted the Tenants' Notice to End the Tenancy and the tenancy ended on June 28, 2014. The Tenant continued to say that a move in condition inspection was completed and signed but not given to them until July 6, 2014. The Tenant said that the move out condition report was completed by the Landlord and the Landlords' father and they were told to stay in the kitchen until it was completed. The Tenant said this is not right and Landlord did not comply with the Act or regulations on either the move in or move out condition inspection reports.

The Tenants continued to say that they cleaned the drive way and the Landlord had acknowledged it was done verbally. As well the driveway is older and has a patch and has 2

colour tones in it. The Tenant said this is an old driveway and the Landlord is trying to get the Tenant to pay for a full resurfacing job as a result of a stain from their RV which they cleaned up. The Tenant said the corrosion in the driveway has nothing to do with their cleaning job.

The Tenants said they cleaned the granite counter top with advice from a hardware store and with the product that was recommended by the store. The Tenant said the countertop was clean and the stain did not show.

With regard to the flood in the unit and the insurance claim the Tenant said their son did leave the water on and the sink did overflow, but it was an accident so they do not believe it was their fault and they do not believe they are responsible for either the insurance deductible of \$500.00 or the increase in premium on the Landlord's insurance policy of \$500.00.

The Tenants continued to say that the scratches in the laminate not hardwood flooring are in high traffic areas and the scratches in the bedroom are not caused by their bed as the scratches in the floor in the bedroom does not match up with the Tenants' bed. The Tenant said the scratches in the floors are normal wear and tear or were there at the start of the tenancy.

The Landlord called her witness R.H. The witness R.H. said he and his daughter did the move out condition inspection report while the Tenants were in the kitchen. After the report was done the Landlord, the witness and the Tenants walked through the rental unit. The witness said he did not remember the discussion between the Landlord and the Tenants about the Tenants waiting in the kitchen while the move out condition report was completed.

The Landlord said that she has not completed the repairs as she could not afford it. As well the rental unit was rented to new tenants on July 1, 2014.

In closing the Tenants said they complied with all the Landlord's requests and they did all the cleaning and repairs with advice from people who they thought had knowledge on the cleaning issues they were doing. The Tenants said the Landlord did not comply with the Act or regulations in doing the condition inspection reports and they believe they left the unit in good condition. The Tenant said they spent 3 days cleaning the unit prior to leaving. The Tenants said they understand that the Landlord filed her application within the timelines so their application is just for the return of their security deposit and pet deposit in the total amount of \$1,675.00 not double the deposits.

The Landlord said in closing that she understands there was a communication breakdown in this tenancy, but she believes the evidence she has provided will support her claims.

Both parties provided photographic evidence of the condition of the rental unit and the disputed damages.

Analysis

In this situation the Landlord is saying the Tenants have caused damage to the rental unit as shown by the move in and move out condition inspection reports. The Landlord is claiming the cost of resurfacing the driveway, repairing the floorings and countertops and to recover insurance costs due to the Tenants' son causing a flood in the unit. The Landlord's total claim is

\$4,130.16 plus the \$50.00 filing fee. The Tenants said that they repaired any damage that they caused above and beyond normal wear and tear and they are not responsible for the Landlord's insurance costs as the flood was an accident. As well the Tenants said the Landlord did not comply with the Act and regulations when completing the condition inspection reports therefore the Landlord does not have a claim on their deposits. The Tenants' claim is for the return of their security and pet deposits in the amount of \$1,675.00.

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report in accordance to the Act and the regulation the landlord's right to claim against the Tenants' security or pet deposit is extinguished. The Landlord provided the Tenants with a copy of the move in condition inspection report on July 6, 2014 which is not within 7 days of doing the inspection which was done on December 22, 2013. Regulations 18 (a) of the regulations states a Landlord must provide the Tenant a copy of the move in condition inspection report within 7 days of doing the report. The report should have been provided to the Tenants by December 29, 2013. As well the Landlord did not conduct the move out condition inspection with the Tenants as stated in section 35 (1) of the Act. I find the Landlord did not complete the move in or move out condition inspection report in compliance with the Act and regulations; therefore the Landlord's claims against the Tenants' security and pet deposits for damages are extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security and pet deposits for damages.

Further the Landlord has made a claim for damages. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has established there was damage during the tenancy the Landlord has not proven there is an actual loss. To prove a loss the Landlord can provide receipts for damages or repairs. If a Landlord provides estimates for work to be done then the Landlord must proof the work will be done in the near future. As the Landlord rented the unit on July 1,

2014, 3 days after the tenancy ended and there are no contracts to complete the work, I find the Landlord has not established proof that she has an actual loss for the driveway resurfacing and the flooring repairs. Consequently I dismiss these claims with leave to reapply when the Landlord can prove an actual loss. It should also be noted the Landlord can only claim for the part of the repairs that the Tenants actually caused. For example if the driveway is older and has patches then the Tenant is not responsible for resurfacing the entire driveway. I also find the \$50.00 estimate cost for the driveway is not the Tenants' responsibility and it is dismissed.

With respect to the counter top repairs; kitchen countertops are for doing kitchen work on. When cooking or preparing food it is expected that there will be spills and mess. Therefore countertops are expected to be able to take splits or if they stain due to spills then the material in the countertop can be expected to stain and this would be normal wear and tear for that material. The Tenants said they cleaned the stain out of the countertop to the best of their ability and they said the countertop looked fine. I accept the Tenants position that they cleaned the countertop and any remaining stains in the granite are normal wear a tear for that material. Consequently, I dismiss the Landlord's claim for \$448.00 for countertop cleaning and repairs.

Further the Tenants agreed that their son left the water on in the bathroom which caused flooding in the rental unit. The Landlord paid a deductible of \$500.00 to the insurance company as part of the insurance claim; therefore I find the Tenants' are responsible for the insurance deductible of \$500.00 and I award this amount to the Landlord. The Landlord is also claiming an insurance premium increase of \$500.00. This premium is not supported by any evidence to proof the amount or that the Tenants are responsible for the increase. Consequently I dismiss the Landlord's claim of \$500.00 for an insurance premium increase.

As the Landlord has only been partially successful in this matter, the Landlord is ordered to bear the cost of the filing fee of \$50.00 that she has already paid.

With respect to the Tenants' claim for the return of their security and pet deposits in the amount of \$1,675.00 I find in the Tenants favour and pursuant to section 67 of the Act I order part of the security deposit to be retained by the Landlord for the \$500.00 insurance deductible. I order the Landlord to return the balance of the Tenants security and pet deposits in the amount of \$1,175.00 forthwith.

As the Tenants have only been partially successful in this matter, the Tenants are ordered to bear the cost of the filing fee of \$50.00 that they have already paid.

Conclusion

A Monetary Order in the amount of \$1,175.00 has been issued to the Tenants. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 08, 2014

Residential Tenancy Branch

