Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF
MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed on February 16, 2015 seeking to obtain a Monetary Order for: damage to the unit, site or property; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for their application.

The Tenants filed on January 19, 2015 seeking to obtain a Monetary Order for: the return of double their security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Landlords for this application.

The hearing was conducted via teleconference and was attended by two Landlords and one Tenant. Each person gave affirmed testimony and confirmed receipt of evidence served by the other. The Tenant S.M. affirmed that he was representing both himself and S.T. in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to monetary compensation for repairs and cleaning of the rental unit?
2. Have the Tenants proven entitlement to the return of double their security deposit?

3. Have the Tenants proven entitlement to monetary compensation for the cost of having the rental unit carpets professionally cleaned?

Background and Evidence

The undisputed evidence was the Landlords and Tenants entered into a written fixed term tenancy agreement that began on January 1, 2013 and switched to a month to month tenancy after December 31, 2013. Rent of $975.00 was due on or before the first of each month and on December 8, 2012 the Tenants paid $487.50 as the security deposit. The Tenants provided the Landlords with their forwarding address in writing on December 31, 2014.

The Tenant testified that although they conducted a walk through inspection at the beginning of their tenancy they were never given a copy of a condition inspection report form. He stated that they conducted an informal walk through at the end of their tenancy and no move out condition report form was completed.

The Landlords submitted that the condition inspection report form was completed at the same time they signed the tenancy agreement. They later submitted that the move in condition report form they were looking at was signed and dated January 01, 2012. No condition report form was submitted in the Landlords' evidence. The Landlords submitted that the Tenants gave them approximately 2 or 3 months' notice that they would be ending their tenancy at the end of December 2014. The Landlords did not provide the Tenants with two dates or times to schedule the move out inspection but they did meet at the unit and did a quick walk through.

The Tenant pointed out that they signed the tenancy agreement on December 8, 2012, as per the tenancy agreement submitted in their evidence. He noted that their tenancy did not start until January 1, 2013 so they would not have signed a move in report on January 01, 2012.

The Tenant submitted that they were seeking the return of double their security deposit because the Landlords retained $299.29 of their deposit without their written permission. The Tenant testified that they were also seeking to recover the $95.00 they were required to pay for professional carpet cleaning. They argued that the Landlords insisted that they have the carpets professionally cleaned. The Tenant asserted that the Landlords told them carpet cleaning was part of their tenancy agreement and they later found out that was not the case.

The Landlords testified that they are seeking $598.72 as compensation for repairs and cleaning costs as follows:

1) $165.00 for fridge parts ($71.62 + $59.30 + $34.58) to repair the fridge crisper pan, bin gallon, and plastic trim on the handle. The Fridge was approximately 4 years old. The Landlords submitted that the Tenants told them in early November 2014 that they had broken the fridge pieces and requested that the Landlords source out the

new pieces and the Tenants would pay for them. When the repair person came and ordered the parts the Tenants stated that they would pay for the parts but not the labor to install them.
2) $155.82 labor costs to install the new fridge handle.
3) $175.00 Cleaning costs consisting of $50.00 stove cleaning, $50.00 to clean and remove grease from the concrete patio, plus $50.00 to clean kitchen and bathroom cabinets inside and out;
4) $40.00 to repair damaged walls, sand and paint;
5) $15.00 to supply and replace light bulbs;
6) $47.40 based on an estimate to supply and replace a window spring. The existing window spring was original from when the house was built in 1997.

The Landlords testified that their son assisted them in cleaning and repairing the walls and everything was completed by December 31, 2014. The male Tenant attended the Landlord's home at 7:30 a.m. on December 31, 2014 to return the keys and pick up their security deposit. The Landlords stated that they deducted the cost of the fridge repairs from the $487.50 deposit and gave the Tenants a cheque for $188.21. They said the Tenant was upset about the deductions they had made and he stormed off.

The Tenant disputed all of the items claimed by the Landlords. He argued that they had cleaned the entire rental unit including the oven, bathroom and kitchen cabinets, and the damage to the fridge and walls were normal wear and tear. The Tenant stated that when he returned to clean the concrete patio and find out the type of light bulbs that needed replacing the Landlords told him that he did not have to worry about those items as they would look after it for them.

The Tenant compared the photographs they had submitted alongside the Landlords' photographs and argued that the Landlords had submitted a photograph of a different oven. He pointed out how the cupboards, flooring, and oven elements were different in each picture.

The Tenant argued that the fridge door handle was attached with a small screw and the threads on the handle simply wore out and stripped over time, causing the handle to come off. He admitted that fridge crispers broke during their tenancy but he did not kick it.

The Tenant submitted that the house was over 17 years old and it had some minimal damage that existed at the start of their tenancy. He noted that there were several pin holes in the walls from other tenants hanging up pictures and there were several scuff marks on the trim and baseboards when they first moved into the unit.

The Landlords argued that they were trying to show the Tenants some courtesy because the female Tenant had recently had surgery. They disputed the Tenant's submissions and said they did not tell them they did not have to worry about cleaning the patio or replacing the lightbulbs. Rather, the Tenant became very upset when he

found out the Landlords were keeping part of their deposit for the cost of parts and labor to fix the fridge and he stormed off.

The Landlords submitted that they initially overlooked the required cleaning because the female Tenant was sick. The Landlords said they were going to look after the cleaning and charge the Tenants for the fridge damage because the Tenants had originally agreed to pay for that damage. When the Tenants took the situation this far and made an application for Dispute Resolution, the Landlords said they changed their mind and decided to charge the Tenants for everything.

The Tenants submitted documentary evidence which consisted of, among other things, copies of the tenancy agreement, their written submissions, and their photographs which were taken on December 30, 2014.

The Landlords submitted documentary evidence which included, among other things, copies of: receipts for repairs to the fridge, a quote for parts for the window spring, their written submission, and photographs which were taken December 30, 2014.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Tenants' Application

Residential Tenancy Policy Guideline 1 provides that a tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

Based on the above, and notwithstanding the Tenants argument that their tenancy agreement did not include a term that stated they were required to have the carpets professional cleaned at the end of their tenancy, I accept the Landlords' submission that the Tenants were required to have the carpets cleaned at the end of their tenancy because the Tenants occupied this rental property for two years. Accordingly, I dismiss the Tenants claim for reimbursement of the $95.00 carpet cleaning costs, without leave to reapply.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

This tenancy ended December 31, 2014 and the Landlords received the Tenants' forwarding address in writing on December 31, 2014. Therefore, because the Landlords did not have the Tenants' written permission to keep any portion of the security deposit, the Landlords were required to return the Tenants' security deposit **in full** or file for dispute resolution no later than January 15, 2015. The Landlords returned only a partial amount of $188.21 and did not file an application for Dispute Resolution to keep the security deposit within the required 15 day period.

I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the above, I find that the Tenants have succeeded in proving the merits of their claim and I award them double their security deposit plus interest. The Tenants have already received and cashed the initial refund of $188.21+ $0.00 interest; therefore, their monetary award here will be for the balance owed of **$786.79** (2 x $487.50 deposit + $0.00 interest - $188.21)

I find that the Tenants have partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$25.00.**

Landlords' Application

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Residential Tenancy Policy Guideline 1 provides that the tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act.* Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion.

Given the circumstances presented to me during the hearing I favored the Landlords' submissions over the Tenant's regarding the fridge repairs. I found the Landlords' submissions that the Tenants approached them back in November 2014 and told them that they had broken the fridge handle, crisper, and bin and requested the Landlords source out parts for repair which the Tenants would pay for, to be forthright and credible. I further accept that when the Tenants found out how expensive the labor costs were going to be they refused to pay for them. I make these findings in part due to the fact that the Landlords readily admitted that they had originally agreed to look after the cleaning and other minor issues because the female Tenant was ill and that they changed their mind and charged for everything when the Tenants made their application. The Landlords could have easily denied these facts which lent credibility to all of their submissions.

Furthermore, it is evident that this relationship became acrimonious when the Tenants refused to pay the labor costs to repair the fridge and then realized the Landlords had deducted the cost for parts and labor form their security deposit without their written permission, despite the previous agreement they had entered into.

Based on the above, I conclude that the Tenants were responsible to pay the costs for parts and labor to repair the damage caused to the fridge by their actions during their tenancy, pursuant to section 32(3) of the Act. Accordingly, I grant the Landlord's claim for fridge repairs in the amount of **$320.82** ($71.62 + $59.30 + $34.58 + $155.82).

I find the remainder of the items claimed by the Landlords to be retaliatory based on the Landlords' own submission that they had originally told the Tenants not to worry about the remaining issues and it was not until they were served notice of the Tenants' application that they decided to seek to recover those additional costs.

Based on the foregoing, in absence of a move in or move out written condition inspection report form, and in the presence of the Tenant's disputed oral testimony, I

find the Landlords submitted insufficient documentary evidence to prove the Tenants were responsible for any cleaning costs, costs to replace light bulbs, or for repairs to the walls and window. Accordingly, I dismissed the remaining items claimed totaling $277.90 without leave to reapply.

The Landlords have partially succeeded with their application; therefore, I award partial recover of their filing fee in the amount of **$25.00**.

Monetary Order – I find that these awards meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Tenants' award ($786.79 + $25.00)	$ 811.79
LESS: Landlords' award ($320.82 + $25.00)	345.82
Offset amount due to the Tenants	**$ 465.97**

Conclusion

The Tenants were partially successful with their application and were awarded $811.79. The Landlords were also partially successful with their application and were awarded $345.82. The two awards were offset each other leaving a balance due to the Tenants in the amount of **$465.97.**

The Tenants have been issued a Monetary Order for **$465.97**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the British Columbia 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: July 14, 2015

Residential Tenancy Branch