



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, O, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order totalling \$ 7,975.66 for compensation for cleaning and repairs to the rental unit, to recover the filing fee for this proceeding and a cross application by the tenants for recovery of their security deposit. Both the landlord and tenants attended the telephone conference hearing.

Preliminary Matter:

The tenants' application for dispute resolution stated in the box entitled "Details of their Dispute": "All that I am rightfully owed". They had not checked off any specific remedy or claimed any monetary amount. In their written evidence they requested recovery of their security deposit and "compensation for harassment and time spent on this bogus claim." At the outset of the hearing the tenants confirmed that their application was actually a request for the recovery of their security deposit. I have accordingly amended their application to reflect a claim only for that relief.

Issues(s) to be Decided

Is the landlord entitled to compensation if so, how much?
Are the tenants entitled to recovery of their security deposit?

Background and Evidence

Both parties admitted service of their applications. Based upon the evidence of the landlord I find that this month-to-month tenancy started on September 1, 2009 and

ended on September 30, 2014 when the tenants moved out. Rent was \$ 700.00 per month payable in advance on the 1st day of each month. The tenants paid a security deposit of \$ 350.00 on August 26, 2009.

The landlord produced a move in inspection report dated August 19, 2009 signed by the tenants confirming that there was not any damage present or repairs needed at the commencement of the tenancy. The landlord testified that the tenants did not cooperate with him in agreeing to or participating in a move out inspection at the end of the tenancy. He conducted one in their absence on September 30, 2014 and found damaged carpets and missing basement carpets which were about 5 years old, missing drapes the same age as the carpets, damage to doors and walls, that the suite needed repainting, and that it was not cleaned. The landlord acknowledged receiving the tenants' forwarding address on October 31, 2015 and that his first claim against the security deposit was dismissed with leave to reapply on April 2, 2015. He admitted not returning the deposit or having permission to retain any of it.

Particulars of the landlord's claim are:

Interior cleaning (42 hours at \$ 20.00 per hour)	\$ 850.00
Repair to hallway	\$ 54.90
Carpet replacement	\$ 2,443.16
Replace basement carpet	\$ 400.00
Carpet cleaning	\$ 160.00
Paint and drywall repair	\$ 1,890.00
Paint	\$ 401.03
Paint	\$ 27.60
Repair parts	\$ 13.41
Deadbolt replaced	\$ 28.83
Door locks replaced	\$ 69.72
Replace broken door	\$ 114.99
Replace door frame	\$ 132.99
Labour for door installation	\$ 150.00
Lock repair	\$ 28.85
Missing curtains	\$ 448.00

The landlord claimed for many other items not listed above but was not able to identify them. I have therefore dismissed all those items as the landlord failed to particularize his claim pursuant to section 59(2)(b) of the Act and rule 2.5 of the Residential Tenancy Branch Rules of Procedure.

Starting proceedings

59 (2) An application for dispute resolution must

(b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings

2.5 Documents that must be submitted with an application for dispute resolution

To the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch:

a detailed calculation of any monetary claim being made;

The tenants admitted to signing the move in inspection report but testified that they did not take it seriously as it was their first one, the landlord told them not to worry about it or any deficiencies and they thought it was a mere formality. The testified however that at the beginning of the tenancy they noticed damage to the unit such as to the doors and carpets.

They testified that their water heater or washing machine broke and as a result they had to discard the basement carpet with the landlord's permission. The other carpets were not new but were dirty, and stained. They testified that they made some alterations to the front door which required making a hole in the hall wall and fastening boards to secure a latch for greater security. They admit not restoring it after they moved out. They admit to doing some drywall repairs which were not professional quality. They allege the unit required repainting after their tenancy but say it was wear and tear.

They claim that the back door, frame and deadbolt were broken at the commencement of the tenancy. They allege that they removed the old curtains and that the landlord had retrieved them when he inspected the flooding caused in the basement which they thought was caused by either the washing machine or a burst water heater.

They testified that the landlord never gave them any notice of a move out inspection. The tenants testified that they felt intimidated by the landlord requiring vacant possession by noon on their last day, requesting the key at noon and by "hanging around" watching as they moved out. Therefore they admit to not cleaning the unit upon or after their move out. They also admit not requesting more time to clean. They submitted that the whole of the landlord's claim was fabricated and exaggerated.

In reply the landlord stated that he did not receive any drapes from the tenants. He recalled precisely that he attended to fix their washing machine which flooded the basement and at that time the carpet was not ruined, he did not permit the tenants to dispose of the carpet and the drapes were not returned to him. He testified that he is an electrician and remembers specifically that he had to change a switch on the washing machine and would have recalled any other events surrounding that event. He testified that the drapes the tenants substituted for the original ones were too long and contrary to code as they hung over an electrical heater which created a hazard. He testified that he had to have new drapes custom made as they were shorter than the usual length as to not cover the heater in accordance with the building code.

Analysis

The landlord admitted receiving the forwarding address of the tenants by October 31, 2014 and not returning or having permission to retain their security deposit. The landlord's original application to claim against their deposit was dismissed on April 2, 2015 with liberty to reapply but without any extension of applicable limitation periods. Therefore I find that the landlord had not complied with section 38 of the Act by returning all the security deposit or making a valid application for Dispute Resolution within 15 days of receipt of the tenant's address in writing or the end of the tenancy. Accordingly the tenants are entitled to recover double their security deposit plus interest amounting to \$ 700.00. The tenants will also recover their filing fee of \$ 50.00.

Section 21 of the regulations made pursuant to the Residential Tenancy Act states:

21. 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.**
(my emphasis added)

The tenants did not adduce any evidence that they complained of the condition of the unit to the landlord nor have they produced any photos of the condition of the unit at the commencement of the tenancy confirming their allegations that any of the damage was preexisting. Accordingly, I find the tenants' mere denial of the condition of the unit and that they were ignorant of the consequences of the inspection report do not constitute a "preponderance of evidence to the contrary" and I therefore accept the landlord's evidence from the move in report as to the condition of the unit at the beginning of the tenancy. I find that as a consequence of the tenants agreeing to the condition move report by signing it, that it therefore fairly represents the condition of the unit at the commencement of the tenancy.

I reject the tenants' evidence that the landlord prevented them from cleaning because he intimidated them as not making any sense and not supported by the facts. I furthermore find that they failed to request the ability to clean. I accept the landlord's evidence that the unit needed cleaning however upon examination of the photos he provided and his cleaning invoice; I find that his claim is excessive. I reduce that claim by 50 % to \$ 425.00

Pursuant to Policy Guideline 40-5 of the Residential Tenancy Act I find that the useful life expectancy of interior paint is 4 years. As the duration of the tenancy was for five years, I have dismissed the landlord's claim for the entire cost of painting. The landlord had included the cost of drywall repair with painting and was not able to separate these claims. Accordingly I have dismissed them all notwithstanding that he landlord may well have been entitled to recovery of the cost of drywall repair.

I allow the sum of \$ 54.90 for the repair of the hallway that the tenants admit doing for security reasons and not repairing upon the conclusion of the tenancy. The tenants had an obligation to make these repairs pursuant to section 32(3)

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) 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.**
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement. (my emphasis added)

There was conflicting evidence by the landlord and the tenants as to what happened to the drapes and the basement carpet.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

The tenants admit removing the drapes and storing them. They claim the landlord retrieved them. The landlord denied ever receiving them. The tenants' recollection was

not consistent as to how the basement was flooded: whether by the washing machine or water heater. Whereas the landlord had a more vivid recollection of when he attended the unit, exactly what was wrong with the washing machine and how he fixed it. He recalled that the tenants had replaced the drapes with ones that were not safe. He was certain that he had not been given the drapes by the tenants. He was certain that the rug was not ruined at that time. I accept his testimony as more reliable, logical and probable and find that he did not receive the drapes back from the tenants and had to have new ones made to order because of their unique length. Pursuant to Policy Guideline 40-6 of the Residential Tenancy Act I find that the useful life expectancy of interior drapes is 10 years accordingly I reduce the landlord's claim for the replacement of the drapes by 50% to \$ 224.00.

Pursuant to the abovementioned paragraph I accept and prefer the landlords' evidence supported by the move in report that during the tenancy the carpets had been destroyed and the basement carpet was discarded without his permission or knowledge by the tenants. The carpets are five years old however, and pursuant to Policy Guideline 40-5 of the Residential Tenancy Act I find that the useful life expectancy of the rugs is ten years. Accordingly I conclude that the landlord is entitled to recover 50% of the total cost of replacing the rugs at \$1,421.58. I also allow the landlord's claim for the rug cleaning at \$ 160.00.

I accept the landlord's evidence supported by the move in report, that the door frame, door and locks needed to be replaced and that they were not damaged at the beginning of the tenancy as alleged by the tenants. For that claim I award the landlord: \$ 114.99 for the door, \$ 132.99 for the frame, \$ 14.95 for the parts, \$ 13.41 additional parts, \$ 150.00 for the installation, \$ 28.83 for the deadbolt, and \$ 69.72 for the door locks.

The landlord has proven a total claim of \$2,810.37. As the landlord was only partially successful, I have allowed only one half of the filing fee of \$ 50.00. The landlord's award must be set off against the tenants' security deposit doubled at \$ 700.00 and their filing fee of \$ 50.00.

Calculation of Monetary Award

Cleaning (50%)	\$ 425.00
Hall repair	\$ 54.90
Drapes replacement (50%)	\$ 224.00
Door replacement	\$ 114.99
Door frame	\$ 132.99
Parts	\$ 14.95
Parts	\$ 13.41
Carpet replacement (50%)	\$ 1,421.58
Door installation	\$ 150.00
Deadbolt	\$ 28.83

Door locks	\$ 69.72
Carpet cleaning	\$ 160.00
Landlord's filing fees (one half)	\$ 50.00
Less security deposit x 2	- \$ 700.00
Less tenants' filing fee	- \$ 50.00
Total Monetary Award	\$ 2,110.37

Conclusion

In summary I ordered that the tenants pay to the landlords the sum of \$2,810.37 in respect of this claim plus the sum of \$ 50.00 representing one half of the filing fee because of the landlord's divided success. This amount is set off against the award to the tenants for double their security deposit of \$ 700.00 and their filing fee of \$ 50.00. The landlord may retain the original security deposit of \$ 350.00 as the tenants have been given credit for double that amount plus their filing fee. I grant the landlord a Monetary Order for the remainder in the amount of **\$ 2,110.37** and a copy of it must be served on the tenants. If the amount is not paid, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all other claims made by the landlord.

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 22, 2015

Residential Tenancy Branch

