



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNSD, FF
	Landlord MND, MNSD, FF

Introduction

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

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for the return of double the Tenants' security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by posting the package on the door of the rental unit on June 18, 2015. The Tenants said they received the hearing package and the evidence package that was service the same way in October, 2015.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on May 21, 2015 in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on March 1, 2013 as a fixed term tenancy for 6 months and to continue after that on a month to month basis. Rent was \$1,025.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$512.50 on March 1, 2013. A move in condition report was completed on March 1, 2013 and move out condition report was not completed for this tenancy. The Landlord said the Tenants were given two opportunities to do the move out report and the Tenants did not participate. The Tenants said they were available to do the move out report on January 1, 2015 but were not given the opportunity to do it. The Landlord said that the end of tenancy was stressful and the male Tenant was argumentative so the report was not completed.

The Tenant said they told the Landlord on November 29, 2014 verbally and then again on December 10, 2014 in writing that they were moving out on January 1, 2015. The Tenant said they moved out on January 1, 2015. The Tenant continued to say they gave the Landlord their forwarding address in writing along with their phone numbers on a piece of paper on January 1, 2015. The Tenant said they also asked the Landlord to send their security deposit to that address. The Tenant said the address on the paper was a forwarding mailing address not where the Tenants were moving to. The Tenant said they did not receive their security deposit so they have made this application under section 38 of the Act for double the security deposit in the amount of $\$512.50 \times 2 = \$1,025.00$ plus the filing fee of \$50.00.

The Landlord's Advocate and the Landlords said the Landlords did not receive the Tenants' forwarding address until the Landlord received the Tenants' application and hearing package. The Landlord said that when they received the Tenants hearing package they filed their own application within 15 days. The Landlords' Advocate said the Landlords are requesting monetary compensation for damage to the unit. The Advocate said the compensation the Landlords are requesting is as follow:

1. Cleaning the unit in the amount of \$94.50. The Advocate said the Tenants did not clean the unit before they left as they were still removing their belongings up to 2:00 p.m. on January 1, 2015. The Landlord said the agreement was that the Tenants would be out of the unit by 12:00 noon because new tenants were moving in that day. A paid receipt for the cleaning is provided in the evidence. The Tenant agreed there was some light cleaning to be done after they moved out of the unit.
2. The Advocate continued to say the Landlords are claiming \$219.31 for materials and cleaning supplies to repair and clean the unit. The Advocate said the Landlords spent approximately 5 hours working on the unit on January 1, 2015 because the unit had to be ready for the new tenants that day. The Tenant said they agree there was some damage but they were not sure if it was damage or just normal wear and tear. The Tenant said the towel rack was indicated as loose on the move in condition report so when it broke this may have been normal wear and tear.
3. Further the Advocate said the Landlords paid for new flooring in the amount of materials of \$801.02 and labour in the amount of \$359.74. The total cost of replacing the floor covering is \$1,160.76. The Landlord said the carpet had to be replaced because the Tenants' had their mother's dog in the unit and the dog damaged the carpet. The Landlord said the dog was not authorized to be in the rental unit. The Tenant said the Landlord knew they were looking after their mother's dog on occasion and the Tenants had the Landlords' permission. The Landlord said he did not give his permission for the dog entering the rental unit and the tenancy agreement indicates no pets. The Tenant said the carpet was old and not in good condition when they moved in. The Landlord said the carpet was 7 years old but it was in good condition until the dog chewed a hole in it. The Tenant said the hole in the carpet was caused by a wrinkle in the carpet that the vacuum cleaner caught and tore.
4. The Advocate said the Landlords' claim for the broke vacuum cleaner is withdrawn.
5. The Advocate also said the Landlords are claiming for a key in the amount of \$1.89 that was not returned.
6. The Landlords are also requesting the recovery of the filing fee of \$50.00 that they have already paid.

The Landlord continued to say that the male Tenant was very abusive during the move out and he kicked the wall when the Landlord said he was not going to return the security deposit. The Landlord said that they gave the Tenants two opportunities to do the move out inspection but the Tenants were not ready to do the inspection in December, 2014 or on January 1, 2015. The Landlords said the unit was left in poor condition and they had to hire cleaning help to get the unit ready for the next tenants. The Landlord's Advocate said the Landlords' are claiming \$1,476.46 in damages and the \$50.00 filing fee. The Advocate said the Landlord has provided written evidence, photographs and paid receipts to support the Landlords' testimony that the Tenants left the unit in a poor condition and the Landlords incurred expenses to clean and repair the unit for the next tenant.

The Tenants said in closing that they agree there was some cleaning to be done after they left but they cleaned most of the unit except the kitchen. Further the Tenant said the repairs that the Landlord did were mostly normal wear and tear. The Tenant said she expected some of their security deposit back. As well the Tenant said the Landlord had their phone numbers so the Landlords could have called them with information about the security deposit, but the Landlords did not call them.

The Advocate said in closing that the Landlords gave the Tenants two opportunities to do the move out inspection which the Tenants declined. As well the Tenants did not give the Landlords their forwarding address in writing so the Landlords thought the Tenants had forfeited their security deposit to partially cover the cleaning and repairs.

Analysis

Section 38 of the Act says that if a landlord does not return the security deposit within 15 days of the end of tenancy and 15 days after receiving the tenant's forwarding address in writing then the landlord has to pay the tenant double the security deposit.

In this situation there is no corroborative evidence that the Tenants gave the Landlords the forwarding address in writing. The Tenants' say they did give their address and phone numbers to the Landlord on January 1, 2015 and the Landlord said the Tenants did not give him an address until he received the Tenants' application and hearing package. As a result this is a situation of one party saying one thing and the other party saying the opposite. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find that the Tenants have not met the burden of proof required to prove they gave the Landlords their forwarding address in writing on January 1, 2015. Consequently, I find the Tenants have not established grounds to support their claim for double the security deposit; I dismiss the Tenants' application without leave to reapply due to lack of corroborative evidence.

Section 32 of the Act says (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.

Further section 37 of the Act says (1) unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As can be seen in section 32 of the Act both the Landlords and the Tenants have responsibilities to maintain the rental unit, site and property and from section 37 there is an obligation of the tenant to be moved out by 1:00 p.m. and the unit should be left in a clean state. I accept the Landlords' testimony, written evidence and photographs that the Tenants moved out late and the unit was not cleaned and the unit required some repairs. Consequently I find the Landlords have established grounds for their claims of

cleaning and repairs in the amounts of \$94.50 and \$219.31 for a total claim for cleaning and repairs of \$313.81. I award the Landlords \$313.81 for cleaning and repairs.

With regard to the Landlords' claim of \$1,160.76 for the floor covering replacement, I have reviewed the photographic evidence and I find the evidence is unclear how the carpet was damaged but it is clear the carpet was damaged. The Tenant said she damaged the carpet by vacuuming. The move in condition inspection report shows no damage to the carpets therefore as a result of the female Tenant's testimony, the Landlords' testimony and the photographic evidence I find the Tenants did damage the carpet. As the damage was only in one cover of the room I also find that the damage may not have required new flooring but may have been corrected with a repair. Further policy guideline 40 states the economic life expectancy of carpeting is 10 years therefore this carpet had 3 year of life expectancy remaining before replacement. Consequently, I find the Tenant is partially responsible for the replacement of the carpeting. The cost of the replacement flooring was \$1,160.76 and the remaining life expectancy of the carpet was 3 years therefore the replacement cost to be shared by the Landlords and Tenants is $\$1,160.76 \times .3$ (3years/10years) = \$348.23. Further I find the Landlord has established grounds to prove the Tenant is responsible for some of the damage to the carpet. The Tenants are partially responsible for the need to replace flooring. I find the Tenants are responsible for 1/2 of \$348.23 (the remaining life of the carpet) in the amount of \$174.12 for the damage caused by the Tenants to the carpet during the tenancy.

With respect to the Landlords' claim for new keys of \$1.89, I find it is the Landlords responsibility to change the keys at the end of each tenancy therefore I dismiss the Landlords claim for the cost of a new key.

As the Landlords have been partially successful in this matter, they are also entitled to recover from the Tenants the \$50.00 filing fee for this proceeding. I order the Landlords pursuant to policy guideline 17 to keep the Tenant's security deposit in partial payment of the damages. The Landlord will receive a monetary order for the balance owing as following:

	Cleaning and Repairs:	\$ 313.81
	Carpet damage	\$ 174.12
	Recover filing fee	\$ 50.00
	Subtotal:	\$ 537.93
Less:	Security Deposit	\$ 512.50
	Subtotal:	\$ 512.50
	Balance Owing	\$ 25.43

As the Tenant was unsuccessful in this matter I order the Tenant to bear the \$50.00 cost of the filing fee for their application that they have already paid.

Conclusion

A Monetary Order in the amount of \$25.43 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply.

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: October 27, 2015

Residential Tenancy Branch

