



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, MNDC, FF

Tenants' application: MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants
Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Is the landlord entitled to retain all or part of the tenants' security deposit?

Are the tenants entitled to the return of their security deposit including double the amount?

Background and Evidence

The rental unit is a house in Vancouver. The tenancy began on May 1, 2014. The monthly rent was \$2,100.00. The tenants paid a security deposit of \$1,050.00 at the beginning of the tenancy. The landlord did not conduct a condition inspection when the tenancy began.

The tenancy ended and the tenants moved out of the rental unit on March 1, 2015. The landlord claimed that the tenants moved out one day late and he claimed that the tenants did not clean the house and left a lot of garbage behind.

The landlord claimed a monetary award in the amount of \$3,473.94, made up of the following amounts:

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| • Numbered Company – repair hardwood floor: | \$1,770.40 |
| • repair drywall clean-up surfaces | |
| • Receipts from Home Depot, repair items: | \$148.54 |
| • Landlord's work clean block sink and bathtub drains: | \$300.00 |
| • Unpaid rent one day: | \$80.00 |
| • Late payment of rent: | \$75.00 |

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|--|------------|
| • Removal of garbages: | \$100.00 |
| • Claim for landlord's time to deal with Residential Tenancy Branch claim: | \$1,000.00 |

The landlord filed his application on May 6, 2015.

The tenant, Mr. C. C. testified that the tenants moved out on March 1st. He said that the tenants properly cleaned the rental unit and left it at least as clean as it had been when the tenants moved in. The tenants noted that there was no condition inspection performed when the tenants moved in and no inspection was performed when the tenancy ended. The tenants testified that they sent a letter to the landlord by mail on or about March 8, 2105. The letter stated that the tenants had moved out and returned all keys to the landlord on March 1st, the day of the move-out. They requested the return of their security deposit and they provided their forwarding address and phone number in the letter. The landlord received the tenant's letter and he submitted a copy of the letter as part of the documents submitted in support of his application.

The landlord submitted a copy of the rental agreement relating to the tenancy that preceded this tenancy. He submitted that the move-in check list attached to the earlier tenancy constituted evidence that the rental unit was in good condition, except for damage to the refrigerator door.

The landlord submitted some small black and white photocopies of photographs of the rental unit. The landlord also submitted a computer disk containing images of the rental unit as well as an image of a text message that the landlord said was proof that the tenants had acknowledged they were responsible for damage to the rental unit and had agreed to pay for it. The landlord submitted a photocopy of a handwritten invoice prepared on a blank stationer's form. The address and telephone number of a numbered company was stamped on the top of the form. This invoice was dated April 20, 2015 and it contained the following handwritten entry:

1. Repair hardwood floor
2. Repair dry wall damage
3. Clean up surfaces

	1686.09
GST/HST	84. 3
Total	1770.40

The landlord could not state a date when the work was performed. He said it was done in March or April and the new tenants were living in the rental unit when the work was done.

The tenant submitted copies of receipts for three rent payments from the tenants that he said had been paid late. The receipts were submitted in support of his claim for late charges. The tenancy agreement prepared by the landlord did not provide for a late payment charge of \$25.00, which is the maximum allowed pursuant to the Residential Tenancy Regulation; instead the agreement provided for a late payment penalty of \$200.00 for each late payment.

The landlord's computer disk contained a photograph of a text message from unidentified source dated March 2, 2015:

"We are agree to send somebody to hire to fix the damage"

The tenants testified that did not receive a copy of the landlord's DVD disk; they said that they had no knowledge of the text message and they did not agree that the landlord could keep their security deposit. The Tenants said there was no move-in inspection. The rental unit wall and floor were damaged when the tenancy began and it had not been cleaned. The tenant said that they did perform cleaning and left it at least as clean as it had been when they moved in.

The tenant testified that he visited the address of the contractor stated on the invoice which is a residential address in Vancouver, not the premises of any business. The tenant testified that he attended at the rental unit on October 7, 2015, the day before the hearing and spoke to the tenants who were the same tenants who moved into the rental unit on March 1st after he moved out. The new tenants told him that the landlord has not done any work to the rental unit since they moved in. There have been no drywall repairs and no floor repairs to the unit during their tenancy.

Analysis

The landlord did not conduct a move-in or move-out condition inspection. The tenancy agreement merely contains a reference that: "The premises that the tenant has rented has in **good condition**:" followed by a list of items and appliances supplied with the rental unit. This does not constitute a condition inspection report. The report provided by the landlord was a move-in checklist prepared in April 2012 for an earlier tenancy; it is of no probative value with respect to this tenancy.

The landlord did not provide a copy of his digital evidence to the tenants. The tenants denied sending a text message to the landlord agreeing to repair damage. The message submitted by the landlord does not name a source, it was not disclosed to the tenants before the hearing and I do not find that it constitutes an admission by the tenants.

The landlord bears the burden of proving that the tenants caused damage to the rental unit that exceeded normal wear and tear and to establish that he has reasonably expended the amounts claimed. In the absence of any move-in or move-out inspection reports and in light of the tenants' testimony that they did not cause damage beyond reasonable wear and tear and that they cleaned the rental unit when they moved, I find that the landlord has not shown on a balance of probabilities that the tenants damaged the rental unit or that the landlord is entitled to a monetary award for cleaning or repairs. The landlord submitted an invoice containing only the most cursory statement of work with no indication when the work was said to have been performed. It is disputed by the tenant who has been told by the current occupants of the rental unit who moved in on March 1st that the work has not been performed. I do not accept the invoice as authentic and in any event the landlord has failed to prove that the alleged damage was caused by the tenants. The landlord's claim for payment of the sum of \$1,770.40 is dismissed as is his claim for repair items, cleaning and removal of garbage. The landlord is not entitled to claim for his time to file and prepare for a Residential Tenancy Branch hearing; this claim is also denied.

The landlord claimed payment of \$75.00 for three late payments of rent. His tenancy agreement contains an illegal provision that required the tenants to pay a late payment penalty of \$200.00 for each late payment. The landlord may not rely on a void and unenforceable late payment penalty and then reduce the amount in order to claim the maximum late payment charges allowed by the Act; this claim is denied.

The landlord said that the tenants failed to vacate on April 30th as required and he claimed pro-rated rent in the amount of \$80.00 for one day in March. He said that he received pro-rated rent for March from his new tenants because they were delayed in moving in by one day. I was not told what was the rental rate for the new tenancy, but I find that the landlord is entitled to pro-rated rent for March in the amount claimed. All other claims by the landlord are dismissed without leave to reapply. The landlord is entitled to recover the \$50.00 filing fee for his application, for a total award of \$130.00

With respect to the tenants' claim, they have requested the return of their security deposit. Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants provided the landlord with their forwarding address in writing on March 8, 2015. The landlord acknowledged receipt of the letter containing the forwarding address and included a copy of the letter in his evidence. Based upon the acknowledgement of the landlord at the hearing I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The landlord did not commence his application to claim the deposit until May 6, 2015 which was long after the expiry of the 15 day period within which he was required to make a claim or return the deposit as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$2,100.00. The tenants are entitled to recover the \$50.00 filing fee for their application for a total claim of \$2,150.00.

Conclusion

The landlord has been granted a monetary award in the amount of \$130.00. The tenants have been awarded the sum of \$2,150.00. Pursuant to section 72 of the *Residential Tenancy Act*, I set off the amount of the award in favour of the landlord against the amount due to the tenants; this leave a net amount due to the tenants of \$2,020.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered 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: October 30, 2015

Residential Tenancy Branch

