



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MND, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and the two pages that provides additional details of dispute were personally served to the female Tenant. The female Tenant acknowledged receiving these documents and showing them to the co-respondent. I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

On September 25, 2015 and October 08, 2015 the Landlords submitted evidence to the Residential Tenancy Branch. The Landlord stated that these documents were personally served to the female Tenant on October 07, 2015. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?
Are the Landlords entitled to retain all or part of the security deposit?

Background and Evidence

The Landlords and the Tenants agree that:

- this tenancy began in 2013;
- the Tenants paid a security deposit of \$400.00;
- a condition inspection report was not completed at the start of the tenancy;
- the tenancy ended on May 31, 2015; and
- a condition inspection report was completed on June 02, 2015, although the Tenants did not sign it as they did not agree with the content of the report.

The Landlord stated that the Tenants provided a forwarding address, via email, sometime in April of 2015. The female Tenant stated the Landlords were provided with a "hard copy" of their forwarding address, although she does not recall the date it was provided.

The Landlords are seeking compensation, in the amount of \$1,575.00, for repairing the ceiling in the residential complex.

The Landlords and the Tenants agree that in June of 2014 the male Tenant accidentally left the tap in the laundry sink running; that the sink was full of clothes; that the water overflowed; and that the water leaked through the floor and through the ceiling below.

The Landlord stated that shortly after the incident with the water the Landlords contacted the builder of the residential complex, who told them to mop up the water and to turn up the heat in the residential complex. She stated that the Landlords and the Tenants both cleaned up the water and that the heat in the residential complex was turned up.

The Landlord stated that in January of 2015 the Landlords noticed cracks in the ceiling below the laundry room, which the Landlords contend are consistent with water damage. She stated that after the cracks were noticed the Landlords again contacted the builder of the residential complex who told them the cracks were likely the result of the flooded sink.

The Landlords and the Tenants agree that the Landlords never brought the cracks in the ceiling until the rental unit was inspected in June of 2015, at the end of the tenancy. The male Tenant contends that this damage should have been brought to their attention prior to the end of the tenancy. The male Tenant stated that when he viewed the alleged damage he could not see any cracks, which he says may be because the ceiling is very high.

The Landlords submitted photographs of the damaged ceiling. The Landlords submitted a \$1,575.00 estimate for the repairs to the ceiling, which includes carpet cleaning. The Landlord stated that the carpet required cleaning because they could not remove the stain on the carpet from the leak in June of 2014.

The Landlords are seeking compensation, in the amount of \$350.00, for repairing the cabinet doors.

The Landlords submitted photographs of cabinet doors in which the surface of the doors appears to be peeling away from the door. The Landlord stated that the Tenants informed them that the damage to the doors had been caused by the Tenants' toaster.

The male Tenant stated that it is possible their toaster damaged the doors but there was nowhere else in the kitchen to place their toaster.

The Landlords are seeking compensation, in the amount of \$150.00, for repairing the bathroom door and frame.

The Landlords submitted photographs of door and frame, in which the surface of the door and frame appears scratched. The Landlord stated that the Tenants had a hanger over this door that was used to dry clothes, which caused the damage to the door and frame. The Landlords submitted an estimate which indicates it will cost \$150.00 plus tax to repaint the door and frame.

The male Tenant acknowledged that the damage to the door and frame could have been caused by the hanger they had over the door.

Analysis

Section 23(4) of the *Act* requires a landlord to complete a condition inspection report of the rental unit at the start of the tenancy.

Section 24(2)(c) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(4) of the *Act*. As I have concluded that the Landlords failed to comply with section 23(4) of the *Act*, I find that the Landlords' right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlords' right to claim against the security deposit has been extinguished, pursuant to section 24(2) of the *Act*, the Landlords do not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlords is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing.

As the Landlords have not yet returned the security deposit and pet damage deposit, I find that the Landlords did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security

deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(6) of the *Act*, I find that the Landlords must pay double the security deposit to the Tenants.

Residential Tenancy Branch Guideline #17 stipulates that when a landlord's right to retain the security deposit and a tenant's right to the return of the deposit have both been extinguished, the party who breached their obligation first will bear the loss. I concur with this guideline and, therefore, I find there is no need to determine if the Tenants also extinguished their right to the return of their deposit when they refused to sign the condition inspection report that was completed at the end of the tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(3) of the *Act* requires tenants to 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. I find that section 32(3) of the *Act* requires the Tenants to repair any damage arising from the incident in June of 2014 when the male Tenant accidentally left the water running in the laundry sink.

When the evidence is considered in its entirety, I find that the damage to the ceiling below the laundry room was, on the balance of probabilities, the result of the sink flooding. In reaching this conclusion I was influenced by:

- the proximity of the damage to the sink that was flooded;
- the builder's determination that the damage was likely the result of the water damage; and
- most importantly, the photographs of the ceiling which show damage that is, in my experience, highly consistent with water damage.

I therefore find, pursuant to section 32(3) of the *Act*, that the Tenants must pay for the repairs to the ceiling, including \$500.00 for repairing the drywall, \$500.00 for painting the ceiling, and \$52.00 in tax.

In adjudicating the claim for repairing the ceiling I have placed no weight on the Tenants' submission that this damage should have been brought to their attention prior to the end of the tenancy. I find that the delay in seeking compensation has no bearing on the fact that the Tenants are obligated to repair the damage. I find that to be particularly true in these circumstances, where the damage may not have been apparent, or noticed, for several months after the sink overflowed.

I dismiss the Landlords' claim for cleaning the carpet as the Landlords have submitted insufficient evidence to establish that the flood resulted in the need to clean the carpet. In reaching this conclusion I was heavily influenced by the absence of independent evidence, such as a photograph, that corroborates the Landlords' claim that the carpet is dirty and that corroborates the Landlords' submission that the need to clean the carpet is sufficiently related to the flood.

Section 32(4) of the *Act* stipulates that tenants are not obligated to repair damage arising from normal wear and tear.

On the basis of the undisputed evidence, I find that the cabinets in the rental unit were damaged as a result of heat from the Tenants' toaster. Although cabinets are not typically damaged by heat from a toaster I find that, either as a result of the design of the kitchen or the material of the cabinets, the toaster did damage the cabinets in this kitchen. As the damage appears to be the result of the Tenants using their toaster in an appropriate manner (ie: on the counter in the kitchen), I find that the resulting damage should be considered normal wear and tear. In the absence of evidence that shows the Tenants misused or abused the kitchen cabinets, I find that, given the construction/design of this kitchen, the damage is normal wear and tear.

As the Tenants are not required to repair damage arising from normal wear and tear, I dismiss the Landlord's claim for repairing the kitchen cabinets.

On the basis of the undisputed evidence, I find that the Tenants had a hanger over the bathroom door. I find, on the balance of probabilities, that this hanger damaged the door and the door frame. In reaching this conclusion I was heavily influenced by the photographs submitted in evidence, which depict damage to the door that is highly consistent with a hanger resting on the top of the door. I therefore find, pursuant to section 32(3) of the *Act*, that the Tenants must pay for the repairs to the door and frame, which is estimated to be \$150.00 and \$7.50 in tax.

I find that the Landlords' claims have some merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim, in the amount of \$800.00, which is comprised of double the security deposit.

The Landlords have established a monetary claim, in the amount of \$1,259.50, which is comprised of \$1,052.00 for repairing the ceiling; \$157.50 for repairing the bathroom door/frame; and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two claims, I find that the Tenants must pay the Landlords \$459.50 and I grant the Landlords a monetary Order for the \$459.50. In the event the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of 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: October 29, 2015

Residential Tenancy Branch

