



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for a Monetary Order for unpaid rent or utilities, for compensation for damage to the unit, site or property, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 23, 2015. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlords' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent or utility arrears and if so, how much?
2. Are the Landlords entitled to compensation for unpaid rent or utilities and if so how much?
3. Are there damages to the unit and if so how much?
4. Are the Landlords entitled to compensation for the damage and if so how much?
5. Are there other losses or damages and are the Landlords entitled to compensation?
6. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on June 1, 2012 as a fixed term tenancy with an expiry date of May 31, 2013 and then renewed on a yearly basis, although new tenancy agreements were not completed. Rent was \$1,200.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$600.00 on May 15, 2012. A move in condition inspection report was completed on June 1, 2012. The Landlord said a move out condition inspection report was completed after the Tenant and Landlord did a walk-through of the unit and that the Tenant signed the report. After some discussion the male Landlord said the report was signed at the first extension of the tenancy not at

the walk through at the end of the tenancy. As the report was not completed correctly with the Tenants at the end of the tenancy and the Tenants did not sign the report at the end of the tenancy the move out condition inspection report does not comply with the Act or regulations. The Tenant said the Landlord copied her signature from another document and moved it to the move out condition inspection report. The Tenant said no move out condition inspection report was completed with the Tenants. The Tenants and the Landlords disagreed on the validity of the move out condition inspection report.

The Landlord continued to say that the Tenants damaged the rental unit and they have made an application for compensation for the damage and loss. The Landlord said they are requesting the following compensation:

1. The replacement of a pocket door and track in the amount of \$575.00.
2. Replacement of a drain and 2 blinds in the amount of \$129.69.
3. The replacement of a toilet paper holder at \$20.98.
4. To replace a door knob in the bathroom for \$23.51.
5. Costs of materials to clean the oven and repair holes in the walls for \$10.04.
6. To replace 4 screens in the amount of \$145.00 and the labor of \$40.00 to put the screens in.
7. Unpaid utilities from the end of the tenancy in the amount of \$46.34.
8. One day of rent as the Tenants over held the tenancy until June 1, 2015 for the amount of \$40.00.

The Landlords application is for a total of \$1,031.16 less the remaining balance of the Tenants security deposit. The Landlords indicated the remaining balance of the Tenant security deposit was $\$614.40 - 57.00 = \557.40 . The Tenants indicated they had agreed to deduction from the security deposit of $\$614.40 - \$117.42 = \$496.98$. Both parties calculated the security deposit with interest but there has been no interest paid on deposits for 2012, 2013, 2014 and 2015. Therefore the security deposit is \$600.00. The Landlord requested to retain the full amount of the security deposit to cover part of the damage costs.

The Landlord was asked what age the rental unit is. The Landlord said he thought it was 20 plus years or more. As well the Landlord said they purchased the unit 3 years ago and he thought the unit had been renovated but he was unsure when the renovations may have happened.

The Tenants said the pocket door track was broken and when the male Tenant forced it the track broke further. The Tenant said the door was not damaged and they thought the track could be repaired for \$45.00. The Landlord said the door was damaged and had to be replaced. No pictures of the damaged door were submitted but an invoice to replace the door and track was submitted by the Landlord and it says "replace old damage pocket door and hardware with new 6 panel white pocket door complete with hardware."

The Tenant continued to say that drain plug was not working and was noted on the move in report. As well the blinds were very old and broken so the Tenants took them down and stored them on the property. The Tenant said the blinds were not worth using.

Further the Tenant said the toilet paper holder was not broken but did have a chip out of it. The Tenant continued to say the bathroom door knob broke so the Tenants replaced it with another door knob. The Tenant said there was no problem with both these items. The Landlord said the door knob did not match the bathroom so they had to replace it and the paper holder was broken.

The Tenant said they forgot to clean the oven but they did agree to a deduction from their security deposit in the amount of \$5.00 for cleaning products. The Tenant said there were some holes in the walls from hangings but no instruction were given to them at the start of the tenancy about hanging things on the walls so they did not realize they could not put nails in the wall for hangings.

In addition the Tenant said the move in condition inspection report indicates that there were no screens in the bedrooms and bathrooms. The Tenant said these items were crossed off on the report but she did not cross them off. The Tenant said the Landlord should not be changing the report or claiming for something that was not there. The Landlord said the items were crossed off because they were listed in the kitchen part of the report not on the bedroom and bathroom part of the report. The Landlord said the screens were in the unit at the start of the tenancy.

The Tenant continued to say they agreed to the following deductions from their security deposit:

1. Fortis utility payment of \$31.73.
2. Hydro utility payment of \$30.30.
3. Oven cleaner of \$5.00.
4. Repairs to the Pocket Door of \$50.39.

Total deduction \$117.42.

The parties did not agree on the deductions from the security deposit.

The parties were offered the opportunity to settle the dispute between themselves but the opportunity was declined by the Tenants as they said they had already try to settle the dispute with no success.

The Tenants said in closing that it was a good tenancy until the move out walk through. The Tenant said the Landlord did not do a move out condition inspection report with the Tenants and the Tenant did not sign the report. The Tenant said she did not sign the report at the end of the tenancy and she did not sign the report on any of the renewals

of the tenancy. The Tenant said the Landlord copied her signature from another document onto the move out condition inspection report.

The Landlord said in closing that the Tenant signed the report at the first renewal of the tenancy agreement. The Landlord said he may have been misunderstood when he said the Tenant signed the move out report at the end of the tenancy during the walk through.

The Landlord questioned the Arbitrator how to review a decision and the Arbitrator told the parties about the review process and how to initiate a Judicial Review in the court system.

Analysis

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.

Consequently many disputes about damage to a rental unit have discussions about whether the damage is caused by neglect or actions of the tenants or if the damage is a result of normal wear and tear. Some of the factors that enter into this discussion are the age, condition and use of the rental unit as well as the information on the condition inspection reports. In this situation the house is an older unit and the Landlord was not sure when the last renovations took place. The Landlord said they have only owned the house for 3 years. As well the move out condition inspection report is questionable as the report was not completed by both the Landlords and Tenants. The Landlords completed the report after the walk through with the Tenants and after the Tenants had vacated the rental unit. Further the female Tenant's signature may have been misrepresented by the Landlords as the female Tenant said it was copied from another document and placed on the report. The Landlord said it was signed on the first renewal of the tenancy which would have been May 31, 2013. In any case the move out condition inspection report was not completed as required by the Act and regulations therefore; I do not accept the move out condition inspection report as evidence in the hearing.

Section 36 (2) of the Act says unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As a result of not completing the move out condition inspection report in accordance to the Act and regulations the Landlord's claim against the Tenants' security deposit is extinguished. I dismiss the Landlords' claim to retain the Tenants' full security deposit of \$600.00.

With respect to the Landlords' claim of \$575.00 for the replacement of the pocket door and tracking. The Tenant said the door was not broken and the Landlord said the door was damaged. There is no photographic evidence to show the door was broken, but the repair invoice says the door was **old and damaged**. As well the Tenant said the male Tenant forced the door because the track was damaged and this damaged the track of the pocket door more. Given the evidence in the invoice and the testimony that the male Tenant forcing the pocket door; I find the Landlord has established grounds for

compensation for damage to the pocket door and track. I also accept the Tenants' testimony that the track for the door was damaged at the start of the tenancy. The Tenant has already agreed to \$50.39 towards repairs of the door track and I award the Landlords \$100.00 in addition as compensation towards the door replacement. The original condition of the door and the damage to the door is unknown therefore; I find full compensation as requested by the Landlord is not warranted.

Further the Landlords' are claiming for the replacement drain, the screens replacements and labor to replace the screens. I find these items are covered by the move in condition inspection report as damaged or not existing. The drain is indicated as damaged and the screens (although crossed off) say there are no screens in the bedrooms or bathrooms. Any changes to a condition inspection report has to be initialed by all the parties otherwise the change is not valid. There are no initials by the changes regarding the screens or lack of screens therefore the change to the report is not valid. I accept there were no screens in the bedrooms and bathroom at the start of the tenancy. Consequently, I dismiss the Landlords' request for compensation for the drain, the screens and the labor to replace the screens.

In regards to the Landlords' claim for the replacement toilet paper holder, the bathroom knob, and the replacement of blinds. These items all fall into the category of normal wear and tear as general living does cause wear and damage to items in a rental unit. As well I accept the Tenants testimony the blinds were old and in poor condition. A landlord must anticipate normal wear and tear and make provisions in the rent amount for wear and tear to the unit. Consequently I dismiss the Landlords' claim to replace the toilet paper holder, the bathroom knob and the blinds as this damage is deemed to be normal wear and tear on the rental unit.

Further the Tenant has already agreed to a deduction from the security deposit for cleaning materials for the oven, so I award the Landlord \$5.00 for cleaning products to clean the oven. As for the holes in the walls it is the Landlords obligation to advise tenants at move in what is acceptable for hanging things. If this is not done then the landlord loses the opportunity to claim wall damage unless the damage is severe. As there is no evidence to show the degree of wall damage; I dismiss the Landlords' claim for wall damage and for the cost of materials to repair the holes in the walls.

The Landlords have also requested an additional day of rent in the amount of \$40.00 as the Tenants did not move out on May 31, 2015 as agreed, but on June 1, 2015. Both parties agreed this was correct and therefore I award the Landlords \$40.00 for the Tenants overholding in the unit by one day.

In addition the Landlords have requested the final utility bills for the unit be paid by the Tenants. The Landlord said they paid \$5.01 for gas and \$41.33 for hydro on the final billing on invoices dated June, 2015. I accept the Landlords' testimony and evidence that these amounts are owed for utilities from the tenancy. I award the Landlords \$46.34 in utility costs.

As the Landlords have only been partially successful in this matter, I order the Landlords to bear the cost of the filing fee of \$50.00, which the Landlords have already paid. I order the Landlords pursuant to s. 38 and 67 of the Act to keep \$241.73 of the Tenants' security deposit and return \$358.27 forthwith. The Tenants will receive a monetary order for the balance owing as following:

Security Deposit		\$600.00
Due to Landlord:		
Overholding Rent:	\$ 40.00	
Pocket door and track repairs	\$ 150.39	
Utilities	\$ 46.34	
Oven cleaner	\$ 5.00	
Total		<u>\$241.73</u>
Balance owing Tenants		<u>\$358.27</u>

Conclusion

A Monetary Order in the amount of \$358.27 has been issued to the Tenants. A copy of the Order must be served on the Landlords: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 13, 2016

Residential Tenancy Branch

