



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MND, MNSD, MNDC, FF

For the tenants – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security deposit; and to recover the filing fee from the landlords for the cost of this application.

The landlords and tenants attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords testified that they did not receive the tenants' documentation provided by registered mail, The tenants had served the landlord with their hearing documents in accordance with section 89 of the *Act*; served by registered mail on December 31, 2015. The landlords are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The tenants testified that they did not receive all of the landlords' documentary evidence. The landlords confirmed that all evidence was sent by registered mail to the tenants in accordance with section 88 of the *Act*. The tenants are

deemed to have received this on the fifth day after it was mailed as per section 90(a) of the *Act*.

I am satisfied that both parties have been served for the purpose of the *Act* and I have allowed both parties evidence to be considered at this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order for the return of their security deposit?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2013 for a fixed term of two years, although the tenants did not take possession of the rental unit until sometime in September, 2013. The tenants vacated the rental unit on July 16, 2015 although the tenancy did not legally end until July 31, 2015. Rent for this unit was \$1,300.00 per month due on the 1st of each month. The tenants paid a security deposit of \$650.00 on July 08, 2013. Both parties attended a move in and a move out condition inspection of the property. The tenants agreed that they have not provided their forwarding address in

writing to the landlord. The hearing documents were sent to the dispute address as the tenants had arranged to have their mail forwarded through Canada Post.

The landlords' application

The landlords testified that the tenants failed to leave the rental unit reasonable clean at the end of the tenancy. The landlords engaged the services of a cleaner who spent eight hours cleaning the unit for \$20.00 an hour. The cleaner had to clean the floors, windows, bathrooms particularly the toilets, the outside area by the basement entrance, the storage room, stained walls, the kitchen, light fixtures and areas of the basement. The landlords seek to recover the cost for the cleaner of \$160.00. The landlords have provided some undated photographic evidence, the invoice from the cleaner and the move out condition inspection report in documentary evidence.

The landlords testified that the tenants caused damage to the door of the dishwasher. This damage could not be repaired as the door was cracked and the plastic had buckled. During the tenancy the dishwasher required repair and the landlords sent in a repair man. At that time the landlords testified that the door of the dishwasher was fine. The dishwasher was four years old at the end of the tenancy. The landlords replaced it at a cost of \$589.24. A copy of the invoice and photographic evidence has been provided.

The landlords testified that the tenants caused some damage to the walls in the rental unit. The laundry room wall had shelving screwed into it which caused the wall to crack. Other walls suffered from marks and screw holes some of which had been puttied. The landlord seeks to recover the cost for the repairs to the wall for compound, drywall and paint of \$64.00 and labour costs to repair and paint the wall of \$310.00. The landlords testified that the laundry room was last repainted five years ago.

The landlords testified that there were other holes in the bedroom wall and other areas of the unit. The yellow walls were last repainted 12 years ago and the other coloured walls were last repainted around five years ago. The landlords have not yet had this

work done but have estimated the cost for this work to be more than \$560.00. The landlords seek to recover \$560.00 for labour costs and \$360.00 for paint.

The landlords testified that the kitchen countertop was damaged with two pronounced white marks. The counter top has not yet been replaced but the landlords' estimate the cost will be \$200.00.

The landlords testified that the tenants were provided with two keys for the deadbolts. Only one key was returned at the end of the tenancy. Both keys opened all three locks in the unit. As one key has not been returned the landlords seek the cost to replace two of the deadbolts. The landlords testified that they don't currently have the funds to do this work but have estimated the cost to be \$135.00.

The landlords testified that although the tenants did clean the carpets themselves the carpets were not left clean at the end of the tenancy. Three of the five bedrooms, the stairs and hall require cleaning. The landlords have not provided a copy of the carpet cleaning invoice; however, testified that the invoice was for \$157.50.

The landlords testified that the tenants failed to replace two burnt out halogen bulbs in the kitchen and five other bulbs throughout the unit. The landlords seek to recover the cost for replacement bulbs of \$22.00. No receipts have been provided in evidence.

The landlords testified that a section of the wood on the stairs was left damaged due to a huge gouge. This has not yet been repaired. The landlords estimated the cost of materials for this repair will be \$35.00 and the labour costs will be \$50.00. The landlord referred to their photographic evidence, however, there was not a picture showing this damage.

The landlords testified that the curtain in one of the bedrooms had been cut at the bottom by the tenants. The landlords referred to their photographic evidence showing

the curtain. The landlords testified that the curtains were replaced for \$45.00 but agreed they have not provided the receipt in evidence.

The landlords testified that the tenants cut branches from a tree in the yard. This tree has been left unsightly. The landlords agreed the tree is likely to grow back but it is currently not pleasing to the eye and the landlords are trying to sell the property. As this will take years to grow back the landlords seek \$500.00 in compensation. The landlords testified that they had asked the tenants not to cut back any tree branches.

The landlords seek to recover \$30.00 for gas used in their vehicle to file their application, \$10.00 for photo processing and the \$50.00 filing fee. The landlords also seek an Order permitting them to keep the security deposit in partial satisfaction of their claim.

The tenants disputed the landlords' claim for cleaning. The tenants testified that they disagreed on the move out condition inspection report with the condition recorded of the rental unit. The tenants testified that the landlords' photographs are undated or time stamped and referred to their own photographic evidence which is dated and time stamped, showing the rental unit was left in a clean condition including the stairs, bathroom, floors and carpets. The tenants testified that they spent two days cleaning the unit; however, agreed that they forgot to clean two of the toilets. They returned to clean one of the toilets but were prevented by the female landlord from cleaning the other toilet. The police had to be called after there was an altercation with the female landlord.

The tenants asked the landlords when their photographs were taken. The landlords responded that some were taken after the inspection and some taken the next day. The tenants asked the landlord MK about their photographs showing the the back deck and do the landlords agree that MK pressure washed the back deck before the tenants moved out but did not stain it until after the tenants moved out, if so then why do the

photographs show something different. The landlord MK responded that the photographs were taken as stated or a few days after.

The tenants asked the landlord MK if he remembers doing the inspection with just the three of them and did he see the tenants' carpet cleaner at the unit and did he ask the tenants how they had got the carpets so clean. MK responded that the tenants had steam cleaned the carpets and they were still wet. MK testified that he was not there to do the inspection. TK testified that MK was at the unit initially but TK came to do the inspection. The tenants disputed this and testified that they had done a complete walkthrough with MK prior to TK arriving. TK only did a quick five minute walkthrough with the tenants.

The tenants testified that the landlord had pressure washed the back deck and this created a mess all over the outside area which the tenants had already cleaned. The tenants referred to their photographic evidence showing the debris from the deck.

The tenants disputed the landlords' claims concerning the dishwasher. The tenants testified that when they moved into the unit and pulled down the door of the dishwasher it made a loud noise. The landlords sent someone round to look at the dishwasher and informed the tenants that the door was cracked. The dishwasher did not leak. The landlord MK was made aware of this but no action was taken as the dishwasher operated fine.

The tenants disputed the landlords' claim for painting and repairs. The tenants agreed they did put in some drywall screws for pictures and shelving but did not receive any advice from the landlords about what they could hang or the types of screws or hangers to use. The tenants testified that they had paid rent for a month and a half prior to moving in. The landlords had agreed to paint the unit but when the tenants moved in they found putty on the walls in the hallway and bedroom and the unit had not been painted. The tenants disputed causing any damage to the walls and were instructed by the landlords not to use any mud or putty on the walls before they moved out. The

tenants referred to the landlords' photographs and stated that this is what the walls looked like when they moved in; however, it was not documented on the move in report. The tenants suggest that some of the landlords' photographs could have been taken after a previous tenancy as the colour of walls are different to when they resided in the unit. The tenants referred to picture #4 and # 20. One room has green walls and one had beige walls; however, the landlords state this is the same room when clearly they are not. The tenants testified that one room had a chalk board wall and they did not paint any walls in the unit.

The tenants disputed the landlords' claim for the kitchen countertop. The tenants testified that they have no idea what the white marks are as shown in the landlords' evidence. It was not noticed during the move out walkthrough and was not noted on the inspection report. After the police had been called in to speak to TK the tenants came back into the unit and noticed the countertop had white marks.

The tenants disputed the landlords' claim for two deadbolts. The tenants agreed they did only return one of the two keys but stated if the keys opened all three locks why was the landlord only replacing two locks.

The tenants disputed the landlords' claim for carpet cleaning. The tenants testified that the carpets were cleaned and the landlord MK was happy with them. There is no provision under the *Act* for the tenants to have carpets professionally cleaned.

The tenants disputed the landlords' claim for light bulbs. The tenants testified that during the inspection with MK, MK turned on the lights in all the rooms and all the bulbs were working at that time. Now light bulbs have been added to the inspection report.

The tenants disputed the landlords' claim concerning damage to the stairs. The tenants testified that they did not cause any damage to the stairs, no damage was pointed out during the inspection and there is no evidence presented showing any damage.

The tenants disputed the landlords' claim for a bedroom curtain. The tenants testified that the curtain appears to have been cut down to size for the window. The tenants disputed that they did this as the curtains were in place at the start of the tenancy and the tenants would have no reason to cut them.

The tenants disputed the landlords' claim for compensation for the tree. The tenants testified that the landlord MK gave the tenants permission to cut some of the trees back at the start of the tenancy. This is also shown in the landlords' documentation where the landlord has written that branches are cut with consent; however, in the landlords' testimony they are now saying that they did not give consent. MK had given the tenants permission to cut back branches and said to cut down what the tenants needed. Later the tenants cut down another tree branch but did not know that this would cause offense so they apologised to the landlords. The tenants testified that the branch will grow back.

The tenants' application

The tenants testified that when the landlord MK told the tenants he was coming to pressure wash the deck the tenants removed their belongings from the deck. Yet when the landlord did the work he shot all the debris towards the shed where the tenants' belongings were stored and did not use caution to protect the tenants belongings. This debris covered the tenants' belongings and the outside area of the unit which the tenants had previously cleaned. The tenants referred to their photographic evidence showing their belongings covered in debris. The tenants testified that they had to clean all of their belongings over a four hour period. The tenants seek compensation for this work of \$140.00.

The tenants seek compensation for being forced out of the rental unit. The tenants testified that the landlords provided the tenants with a typed notice to end tenancy saying they had to vacate the rental unit. This was not a legal notice yet the tenants were going away for two months and felt they could not trust the landlords not to enter their unit while they were gone as they had previously entered without permission. The tenants gave the landlords notice and moved from the unit on July 16, 2015. The

tenants seek to recover half their moving costs of \$3,140.00 and refer to the invoice from their moving company.

The tenants seek to recover their security deposit and their filing fee of \$50.00.

The landlord MK testified that he had told the tenants he was going to be pressure washing the deck. Had the tenants brought it to his attention that their belongings were covered in this debris the landlord could have cleaned their belongings.

The landlord testified that the tenants moved from the unit because they were not happy as the landlords wanted to do some construction work. The tenants gave notice and moved out sooner than the date indicated on the landlords' notice as they were going on a two month trip.

The landlord asked the tenants if SW signed the move out inspection report. The tenants responded yes SW had signed the report but disagreed that the report fairly represented the condition of the rental unit. The landlord asked the tenants if it was noted at the start of the tenancy that a knob was missing on a kitchen cupboard and that the fridge was leaking and was anything noted about the dishwasher. The tenants responded that yes some things were documented but nothing was documented about the dishwasher as it did not leak and the landlord said it was fine. The landlord asked if he had documented minor things why would they not document a crack in the dishwasher. The tenants responded that other things were also not documented such as the walls and a large hole where animals could come in. the landlord asked the tenants if they signed the move in report to agree to the condition of the unit at the start of the tenancy. The tenants responded yes they did. The landlord asked the tenants if they had lived in the house and used the dishwasher prior to the move in inspection. The tenants responded yes but the landlord did not do the report when they moved in and the dishwasher was usable.

The landlord asked the tenants if it was their choice to move out. The tenants responded yes for their safety. The landlord asked the tenants if they put screw holes in the walls for pictures and shelving. The tenants responded yes. The landlord asked if the tenants had put a large amount of tools on the shelving that caused the wall to break. The tenants responded no they put laundry and detergent on the shelving. The landlord asked the tenants if the move in report showed a crack in the laundry room wall. The tenants responded that they did not cause this damage to the wall. The landlord asked the tenants if they said the room shown on the landlords' photographs was a different colour and are the tenants aware of how lighting affects the colours of paint. The tenants responded yes but not green to beige.

The landlord testified that their photographs were taken after the tenancy and not before. The tenants responded that they have proof of the stained deck showing that not all photographs could have been taken after they moved out. The tenants asked the landlord when they stained the deck. The landlord responded within a few days and the photographs were taken before new tenants moved in.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' application for damage to the unit; in this matter the landlords have the burden of proof to show the tenants caused damage to the rental unit or failed to leave the rental unit reasonably clean. I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;

- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I refer the parties to rule 21 of the Residential Tenancy Rules of Procedure which states: 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.

I have considered the landlords' claim for cleaning costs and find the tenants disagreed with the findings of the move out inspection report and their documentary evidence shows that the rental unit was left reasonably clean in accordance with s. 32 of the *Act*.

Under s. 32 of the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required and the landlords claim for \$160.00 is dismissed.

With regard to the landlords' claim for the dishwasher; there is no mention on the move in inspection report that the dishwasher was damaged at the start of the tenancy. While both parties testimony is equally probable the fact remains that the tenants did sign off on the move in report stating it fairly represents the condition of the rental unit. The tenants have the opportunity to add things to that report if they feel the landlord has misrepresented the condition of the unit. To this end I must find that the landlords have established a claim for damage to the dishwasher. However, the dishwasher was four years old and therefore I must make a deduction for depreciation of the dishwasher in accordance to the Residential Tenancy Policy Guidelines #40. This guideline states that the useful life of a dishwasher is 10 years. I therefore deduct 40 percent of the landlords' claim for depreciation. The landlords are entitled to recover **\$353.54**.

With regard to the landlords' claim for painting and repairs; again I must refer to the move in inspection report which does not indicate any damage to the laundry room wall or other rooms. However, a landlord is required to paint a rental unit on a regular basis and the useful life of interior paintwork is shown to be four years. The landlords agreed that the unit has not been painted within the last four years and some areas as long ago as five and 12 years. While I do accept that the tenants can be held responsible for the crack in the laundry room wall I must limit the landlords' claim to cover this damage only to **\$310.00**. Furthermore as the landlord did not instruct the tenants how to hang pictures in the unit then the tenants cannot be held responsible for any picture hangers. No further claim will be considered for painting or wall repair for picture hanging.

With regard to the landlords' claim for the countertop; the landlords have not provided an estimate for the replacement counter top and while I accept that this damage is likely to have been caused during the tenancy as it is not documented on the move in report, I find the landlords' claim has not met the test for damages without a genuine estimate for the cost to repair or replace the counter top. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for lock replacement; I find the tenants' argument in this matter to have some merit. If the tenants only returned one of the two keys why are the landlords only going to replace two of the locks if the keys fit all three locks? The landlords have provided insufficient evidence to show that they do intend to replace these locks and have failed to provide an estimate showing the cost of the locks. It is therefore my decision that the landlords have failed to meet the burden of proof in this matter and their claim for \$135.00 is dismissed.

With regard to the landlords' claim for carpet cleaning; the Residential Tenancy Policy Guidelines #1 refers to the tenant's responsibility for carpet cleaning at the end of a tenancy and states, in part, that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy. There is provision under the *Act* that requires tenants to have the carpets professionally cleaned and I am satisfied from the evidence before me that the tenants did steam clean the carpets and the carpets were left reasonable clean. The landlords' claim for \$157.50 is therefore dismissed.

With regard to the landlords' claim for replacement lightbulbs; I have considered the testimony of both parties and find each parties testimony equally probable. I then referred to the move out condition inspection report and find in the kitchen there is mention of two halogen light bulbs burnt out; however, this area of the report appears to have been altered as part of the line above has been whited out and it is likely that this was altered after the report was completed unless the landlords carried white out with them during the inspection. Furthermore, there is no mention of five other burnt out bulbs only one. It is my decision that the landlords have failed to meet the burden of proof in this matter and their claim for \$22.00 is dismissed.

With regard to the landlords' claim for damage to the stairs, the landlords insisted that they had photographic evidence of this damage; however, having reviewed the photographs provided there is not a photograph showing the damage as described. I find the landlords have not met the burden of proof in this matter that this area was damaged due to the tenants' actions or neglect and there is no estimate provided for the cost to repair any such damage. This section of the landlords' claim for \$85.00 is therefore dismissed.

With regard to the landlords' claim for a damaged curtain, I have reviewed the move out condition inspection report and find there is no mention of a damaged curtain on this report. Furthermore, the landlords have not provided evidence showing the actual cost to replace the curtain. Consequently, I find the landlords have failed to meet the burden of proof in this matter and their claim for \$45.00 is dismissed.

With regard to the landlords' claim for compensation for damage to a tree; I am satisfied from the evidence before me that the landlord MK did give the tenants consent to cut trees back. This consent is clearly recorded in the landlords' evidence. The consent does not limit the tenants to which trees they can cut back. Furthermore, I am not satisfied that the tree has been left unsightly or that it would prevent the sale of the landlords' property. Consequently, the landlords' claim for compensation of \$500.00 is dismissed.

With regard to the landlords' claim for gas used to travel to file their application and for the costs incurred to print photographic evidence; there is no provision under the *Act* for cost to be awarded to a party to file an application or to prepare evidence; these sections of the landlords' claim are dismissed.

With regard to the landlords' claim to keep all or part of the security deposit; as the landlords' claim for a monetary award has been partially successful, I Order the landlords to retain the security deposit of \$650.00 in partial satisfaction of their monetary award pursuant to s. 38(4)(b) of the *Act*.

With regard to the tenants' claim for \$140.00 to clean their belongings; the landlord did notify the tenants that he was going to be pressure washing the deck. The tenants did remove their belongings to the shed. I am satisfied from the evidence before me that the landlord did not exercise due caution when pressure washing the deck which resulted in the tenants' belongings being covered in debris caused by the pressure washing. While I accept the tenants could have complained to the landlord and asked him to clean their belongings I am satisfied that as the landlord did not exercise due caution while cleaning the deck and at that the tenants felt they would rather clean their belongings themselves then have the landlord back to do it. I therefore find the tenants' claim for **\$140.00** is allowed.

With regard to the tenants' claim to recover half their moving costs; I am not satisfied from the evidence before me that the tenants were forced to vacate the rental unit. The landlords did not serve the tenants a legal notice to end the tenancy and therefore it was the tenants' choice to move from the rental unit. As such the tenants must bear the cost for moving. This section of the tenants' claim is therefore dismissed.

As I have awarded the security deposit to the landlords I dismiss the tenants' application to recover the security deposit.

As both parties claims have some merit I find both parties must bear the cost of filing their own applications. A Monetary Order has been issued to the tenants for the following amount pursuant to s. 67 of the *Act*:

Dishwasher	\$353.54
Damage to wall in laundry room	\$310.00
Subtotal for the landlords	\$663.54
Less security deposit	(-\$650.00)
Total amount due to the landlords	\$13.54
Offset against the tenants monetary award	

Cost for cleaning the tenants' belongings	\$140.00
Total amount due to the tenants	\$126.46

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlords are entitled to recover the amount of **\$663.54** of which **\$650.00** may be retained from the security deposit. The balance due of **\$13.54** has been offset against the tenants' monetary award.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$126.46**. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: January 29, 2016

Residential Tenancy Branch

