



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF (Tenants' Application)
 MNSD, MND, MNDC, FF (Landlords' Application)

Introduction

This hearing convened as a result of cross applications wherein the parties sought monetary compensation from the other.

This hearing convened on December 9, 2015 and continued on February 4, 2016. Both parties appeared at the hearing, provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords?
2. Are the Landlords entitled to monetary compensation from the Tenants?
3. What should happen with the Tenants' security and furniture deposit?
4. Should either party recover the filing fee?

Background and Evidence

As the Tenants applied for dispute resolution on July 12, 2015 and the Landlords applied on July 15, 2015, I permitted the Tenants to present their case first.

A.P. testified on behalf of the Tenants and provided background evidence with respect to the tenancy. He testified that the six month fixed term tenancy began on November 1, 2014, expired in the month of April of 2015 after which time the tenancy continued on a month to month basis. Monthly rent was payable in the amount of \$945.00 payable on the 1st on the month. The Tenants paid \$720.00 in deposits, including a security deposit of \$470.00 and a furniture deposit of \$250.00 which the Landlords continue to hold. The Tenants provided a copy of the tenancy agreement as well as the addendum in evidence.

A.P. testified that the Landlords performed a move in condition inspection report which was filed in evidence.

A.P. testified that the tenancy ended on June 30, 2015. A.P. claimed that the Landlords did not give them two opportunities to complete a move out condition inspection report as required by the Act and the regulations. .

A.P. provided text communication between the parties dated June 27, 2015 and June 30, 2015 wherein the parties discuss a time to go over the rental unit.

A.P. testified that the parties agreed the inspection would occur on July 1, 2015, yet when the Tenants went to the rental unit at 12:00 as agreed the Landlords did not perform the inspection and simply informed the Tenants that that they refused to return the Deposits.

A.P. stated that the Landlords then sent a message to them giving them only five hours-notice for the move out inspection to occur on July 2, 2015. The Tenants responded and advised they were not available at that time and proposed July 3, 2015 as an alternate date. In support the Tenants provided an email from the Tenants to the Landlords sent on July 2, 2015 at 6:36 p.m. A.P. testified that the Landlords did not respond to their request to conduct the inspection on July 3, 2015.

The Tenants submit that as the Landlords only provided one opportunity to perform the move out inspection and failed to fill out the proper move out inspection report, the Landlords breached their obligations under the *Act*.

The Tenants sought the sum of \$1,440.00 representing double the \$720.00 paid in Deposits.

In response to the Landlords' monetary claim, the Tenants provided photos of the rental unit at the time of moving in as well as moving out of the rental unit; the latter of which A.P. confirmed were taken on June 29, 2015. A.P. testified that some of the damage claimed by the Landlord was in fact in existence when they moved in, as shown in the photos.

The Tenants confirm that there was a "problem with the sink" at the end of their tenancy and that they agreed to pay the **\$66.00** claimed by the Landlords for the cost or replacing a pipe.

A.P. denied that the Tenants caused any damage to the rental unit.

A.P. confirmed that the Tenants did not have the carpets professionally cleaned. He submitted that as they did not live in the rental unit for more than a year, this was not required. A.P. also claimed that the stains in the carpet pre-dated their tenancy as shown in the photos submitted by the Tenants.

Although the Tenants claimed to have done some cleaning of the rental unit, the Tenants did not dispute the Landlords claims for the cost of cleaning the rental.

LANDLORD'S EVIDENCE

V.K. testified on behalf of the Landlords.

With respect to the Tenants claim that the Landlords failed to give the Tenants two opportunities to complete a condition inspection on move out, V.K. testified that they gave them four opportunities as follows:

- On June 27, 2015 at approximately 6:00 p.m., V.K. attended the rental unit and advised the Tenants that the rental unit was not clean and that it would be reflected in the report. The Tenants then informed the Landlords that they would attend to cleaning.
- On June 30, 2105 V.K. received a text message from A.P. in the morning indicating that they had cleaned the rental unit. V.K. attended at the rental unit at 6:00 p.m. She testified that she was prepared to do the move out condition inspection at that time. A.P. stated that he was not prepared to do so without the other Tenant in attendance.

- On June 28, 2015 V.K. set up a meeting for July 1, 2015 to “finalize the tenancy”. V.K. testified that she attempted to do the report with the Tenants at this time. She stated that several witnesses also observed the Tenants refusing to participate in the move out condition inspection as they simply insisted that they receive the Deposits back.
- On July 2, 2015 the Landlords gave the Tenants the final opportunity to complete the condition inspection report. In support the Landlords provided a copy of an email to the Tenants sent on July 2, 2015 at 12:58 p.m. wherein the Landlords proposed 6:15 p.m. as a time to perform the inspection. V.K. testified that the Tenants failed to attend, and instead sent an email to the Landlords at 6:36 p.m. indicating they could not attend.

V.K. submitted that it was the Landlords’ position that the Landlords were not required to use the RTB#22 Notice of Final Opportunity Form as she believes that form is only required when alternate dates are required.

The Landlord confirmed that she had two witnesses who were able to testify as to the Landlord’s attempts to schedule a move out condition inspection. I requested that the Landlord call only one witness as the hearing had already occupied two hearing spots. The Landlord called S.K. Witness as a witness. She testified that she lived with the Landlord, V.K., and witnessed V.K. speaking with the Tenants.

S.K. confirmed that V.K. provided the following opportunities for a move out inspection: June 27; June 30; July 1; and, July 2, 2015.

S.K. testified that the rental unit required cleaning. She confirmed that M.B. and the Landlord V.N. spent considerable amounts of time cleaning as the condition was “very bad”. She said that the inside of the cupboards were not cleaned, the windows and the wall were not cleaned. S.K. further testified that she was aware that the Tenants damaged the countertop. Finally she stated that the new tenants had to stay in a hotel while the rental unit was being cleaned.

V.K. provided a Monetary Orders Worksheet in evidence wherein it was noted that the Landlords sought the following:

RTB Application fee	\$50.00
Canada post receipt	\$22.64
Carpet cleaning	\$80.61

Cleaning by M.B.	\$80.00
Cleaning by the Landlord, V.N.	\$346.50
Replacement of pipe	\$66.40
USB drives	\$20.13
Cost of colour photos	\$27.93
Countertop replacement	\$1,036.56
Total	\$2,1013.57

V.K. testified that the carpets were not cleaned when the tenancy ended and that the carpets were stained by the Tenants.

She further testified that she attended the rental unit on several occasions during the tenancy and the countertops appeared to be okay until June of 2015 when she noticed considerable swelling and damage by the sink.

V.K. testified that the counters have not been replaced as they have been waiting for the results of this hearing. The Landlords provided, at exhibit F, estimates of the cost for replacement. V.K. testified that the countertops had been installed in 2007. She confirmed that the countertops are the same throughout the house. V.K. testified that she believed, based on information she received from a hardware store, that laminate countertops would have lasted 25 years. She further confirmed that the same countertops that are upstairs are in "impeccable condition".

V.K. alleged that the photos provided by the Tenants were edited and falsified. She stated that V.N. was able to see the edit history of the photos on the DVD drive that was provided by the Tenants and which confirmed the editing history.

In reply A.P. testified that the carpets were not stained by the Tenants. He stated that the photos that were introduced by the Tenants show that the carpets were already stained when they moved in.

A.P. also stated that the Tenants cleaned the walls, the windows and inside the cupboards.

A.P. testified that they cleaned the countertop and did not damage it. He also provided photos of the rental unit when they first moved in and claimed the damage was already in existence when they first moved in, which he said was visible by zooming in on the photos.

A.P. stated that the cupboard drawer had "already come off" when they moved in.

In response to the Landlord's claim that they were given four opportunities for a move out inspection, A.P. stated that the Landlord didn't even give them two opportunities.

He stated that the Landlords claim that they gave an opportunity on June 27 was false. He noted that the parties were texting on June 27, as shown in page 13 of the Landlords' evidence, and the Landlords did not mention the move out inspection.

A.P. further submitted that the Landlord also did not provide an opportunity on June 30. Again, he notes that on page 13 of the Landlord's evidence the parties were texting at that time and the Landlord again did not mention doing a move out inspection.

A.P. further testified that when he came to the house on July 1, 2015, the Landlords gave the Tenants a list of charges for alleged damage. He stated that they did not perform a move out condition inspection at that time, they simply asked the Tenants to agree to deductions to the security deposit. A.P. stated that the Landlord did not offer to do an inspection at all, she did not have any papers with her, and all she wanted to do was have the Tenants agree to a deduction to their deposits. He stated that he was at the rental unit until 2:00 p.m.

A.P. testified that on July 2, 2015 the Landlord texted the Tenants at 12:58 p.m. and asked the Tenants to attend before 6:00 p.m. He stated that he was at work and neither could attend before 6:00 p.m. The Tenants responded that they could not attend before 6:00 p.m., and asked that they do so on July 3, 2015. He stated that the Landlords did not respond to their suggestion of the following day and simply did the report on their own.

In response to the Landlords' claim that the Tenants "falsified and edited the photos", A.P. stated that it was not true. He stated that the only change he made was to mark the photos with red to make it easier for all the parties to see.

A.P. stated that the witness, S.K., was the Landlords' mother such that she was motivated to assist the Landlords in this hearing.

Analysis

The parties disagreed as to whether the Landlords provided two opportunities for a move out condition inspection as required by the *Residential Tenancy Act* and the regulations.

The Landlords' obligations at the end of a tenancy are set out in section 35 of the Act and section 17 of the Regulations. Section 35 of the Act provides as follows:

- 35** (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, *as prescribed*, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

[Emphasis Added]

The above must be read in conjunction with section 17 of the *Residential Tenancy Regulation* which provides as follows:

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice *in the approved form*.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

[emphasis added]

The above referenced approved form is the #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection.

It is notable that in text communication on June 28, 2015, the V.K. wrote that she and the other Landlord had been busy and that, "most probably [they] can arrange a meeting after Wednesday (1st)/Canada day or on Canada day." This communication suggests to me that the Landlords did not propose a day prior to July 1, 2015.

In any case, while the parties disagree as to whether the Landlords offered the Tenants a second opportunity to complete the inspection, the evidence confirms that the Landlords did not use the approved form as required by section 17(2)(b).

I do not accept the Landlords submission that this form was not required. Clearly the Tenants were not able to attend on July 2, 2015, the date proposed by the Landlords, and had suggested the following day. When July 2, 2015 was not possible, it was incumbent on the Landlords to utilize the required form to give the Tenants proper notice of the *final* opportunity. In using the approved forms, the Tenants would be on notice that the Landlords may perform the inspection without the Tenants; in failing to use #RTB-22 Notice of Final Opportunity to Schedule a Condition Inspection the Landlords did not provide the required notice.

Accordingly, I find the Landlords failed to complete the move out condition inspection as required and therefore breached section 35 of the Act and section 17 of the Regulations.

By failing to perform the outgoing condition inspection report in accordance with the Act, the Landlords have extinguished their right to claim against the security deposit, pursuant to section 36(2) of the Act.

The security deposit is held in trust for the Tenants by the Landlords. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an Order from an Arbitrator or the written agreement of the Tenants. Here the Landlords did not have any such authority.

Section 38(6) provides that if Landlords do not comply with section 38(1), the Landlords must pay the Tenant double the amount of the security deposit. Having made the above findings, I Order, pursuant to section 38 and 67 of the Act, that the Landlords pay the Tenants the sum of **\$1,440.00**, comprised of double the security deposit and furniture deposit (\$720.00 x 2).

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim. Section 67 of the *Act* also provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The Landlords seek compensation for the cost of colour photo copies, registered mail as well as the USB drives purchased for the purposes of this hearing. Those items are not recoverable under the *Act*.

The Landlords also seek recovery of the cost of carpet cleaning. The *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises* provides that Tenants are responsible for steam cleaning or shampooing the carpets after a tenancy of one year, or where the Tenants have deliberately or carelessly stained the carpet.

The Tenants submit that the carpets were stained at the beginning of the tenancy. In support they submit photos taken before they moved in which show two small darkened areas in the carpet.

Introduced in evidence was a copy of the Move in Condition Inspection Report (the "Move in Report". The Move in Report makes no mention of stains in the carpet at the start of the tenancy.

Section 21 of the Regulations provides as follows:

Evidentiary weight of a condition inspection report

21. 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 am not persuaded that the Tenants' photos displace the evidentiary weight of the Move in Report. Further, I am persuaded by the photos submitted by the Landlord depicting the condition of the carpets at the end of the tenancy which show that the carpets are stained at the end of the tenancy.

The issue is whether the carpets needed cleaning and shampooing at the end of the subject tenancy. I find, based on the photos submitted, that the Tenants caused *more* staining and that the carpets required shampooing at the end of the tenancy; accordingly, I award the Landlords the requested sum of **\$80.61**.

The Tenants agreed to compensate the Landlords the sum of **\$66.40** for the "sink problem" and the cost of the replacement of the pipe. Accordingly, I award the Landlords this sum.

The Landlords claim a total of \$426.50 for cleaning of the rental unit. The Tenants did not dispute this sum, only to claim they attended to some cleaning of the rental unit. I am persuaded by the photos submitted by the Landlords that the rental unit was not left in the condition required by the Act and that some cleaning was required. Accordingly, I award the Landlords the sum of **\$426.50** as claimed.

The Landlords submit that the countertop requires replacement at an estimated cost of \$1,036.56. They confirm they have not replaced the counters.

The move in condition inspection report makes no mention of damage to the countertop.

The move out condition inspection report indicates that the kitchen countertop "edge is swollen under the sink. No gap visible, no straight edge".

I have carefully considered the photos of the countertop, submitted by the Landlords and the Tenants. The Landlords photos, WP 20150710_071.jpg, WP 20150710_023.jpg and WP 20150710_024.jpg clearly show an uneven surface and obvious swelling of the particle board under the counter.

The Tenants confirm that there was a problem with the sink and agreed to pay the cost of replacing the sink.

The damage to the countertop appears to have been caused by water damage over the course of some time. The Tenants admit being aware of this “sink problem”, although they may not have been aware of the structural issues caused by the prolonged leak.

In all the circumstances, I find that the Tenants caused damage to the countertops, or were negligent in not bringing the “sink problem” to the Landlords attention in a timely manner. Accordingly, I find the Tenants are responsible for compensating the Landlords for this damage.

V.K. confirmed that the countertops had been installed in 2007. Accordingly, they were eight years old at the time the tenancy ended.

Residential Tenancy Policy Guideline 40 – Useful Life of Building Elements provides that counters have a useful life of 25 years. As such, I find the amount claimed by the Landlords should be reduced by 28% (or \$290.34), representing the age of the counters at the time the tenancy ended. Accordingly, I award the Landlords the sum of **\$746.32** for the replacement cost of the countertop.

In total I award the Landlords the sum of **\$1,239.22**.

Cleaning by M.B.	\$80.00
Cleaning by the Landlord, V.N.	\$346.50
Replacement of pipe	\$66.40
Countertop replacement	\$746.32
Total	\$1,239.22

As the parties have shared divided success, I order that each bear the cost of their own filing fee.

Since I have awarded the tenants \$1,440.00, and the Landlords \$1,239.22, the amounts are offset against the other such that I order the Landlords to pay the Tenants the sum of **\$200.78**.

The Tenants are granted a Monetary Order for **\$200.78** and must serve the Order on the Landlords. Should the Landlords fail to pay, the Tenants may file and enforce the Order in the B.C. Provincial Court (Small Claims) Division.

Conclusion

The Tenants are awarded the sum of \$200.78.

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: March 2, 2016

Residential Tenancy Branch

