



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenants' security and pet 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 and landlords attended the conference call hearing, gave sworn testimony and affirmed testimony and were given the opportunity to cross examine each other on their evidence. The landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the parties were permitted to provide additional evidence after the hearing had concluded. The parties confirmed receipt of evidence. 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 rental unit?
- Are the landlords permitted to keep the security and pet deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on December 01, 2012 as a fixed term tenancy for a year, thereafter reverting to a month to month tenancy. The tenancy ended on August 31, 2015. Rent for this unit was \$875.00 per month due on the first of each month. The tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 on December 01, 2011. Both parties attended a move in and move out condition inspection of the rental unit and the tenants provided their forwarding address in writing on August 29, 2015.

The landlords testified that the tenant caused considerable damage to parts of the rental unit as follows:

Dryer – the dryer top was significantly scratched to the point that rust was showing through. The landlords referred to their photographic evidence. The tenants had failed to inform the landlord that the dryer duct had come loose and the entire room was exposed to moisture and lint. This has not yet been repaired, but a quote was obtained to resurface the dryer and this will have to be shipped to a repair shop. As the new tenants have since moved into the unit, this repair will have to wait until the unit is vacant again. The landlords seek to recover the cost quoted for the repair of \$140.00 and \$89.50 for shipping costs to the repair shop.

Carpet cleaning – the carpets were left extensively stained and had a strong pet odour. The landlords referred to the addendum to the tenancy agreement in which it states that the carpets were professionally cleaned at the start of the tenancy and must be cleaned at the end of the tenancy. However, as the landlords decided that due to the extent of the staining they would replace the carpets instead of having them cleaned so costs were incurred for cleaning. The landlords therefore withdrew both sections of their claim for carpet cleaning and pet order removal. The landlords did; however, provide invoices for replacement carpets but as this was not claimed on their original application I am not prepared to make a finding in this matter as in my view, it would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims and the tenants were not put on notice of a claim for replacement carpets.

Light bulbs – the tenants did not replace burnt out light bulbs and fluorescent tubes. In the kitchen all the fluorescent tubes were out, bulbs were out or missing in the stairway and hall, the main bathroom and the master bedroom ensuite. The landlord seeks to recover the amount of \$47.58 for replacement bulbs and fluorescent tubes. Receipts for these bulbs and tubes have been provided in evidence.

Interior cleaning – the tenants did not leave the rental unit reasonable clean. The lights, the interior of the washer, the walls and the stove were left in a dirty condition. The landlord's referred to their photographic evidence showing these areas. The landlords spent six hours cleaning the unit and seek to recover \$25.00 per hour to an amount of \$150.00.

Deck cleaning – the tenants left the deck in a filthy condition, it was also stained and there were items left on the deck which had to be removed and disposed of. The landlords referred to their photographic evidence showing this area. The landlords had to clean the deck which took two hours at \$25.00 an hour. The landlords seek to recover \$50.00.

Closet shelving – The tenants had removed the brackets and shelving from a closet and these were found in the laundry room. The landlord had to replace this shelving which took 30 minutes. The landlord seeks to recover \$20.00 for this work.

Stove pans and trim – the tenants left the stove pans and trim extensively stained and due to food deposits and lack of care these pans and trims suffered from pitting and corrosion. The landlords had to replace the pans and trim and seek to recover the cost of these items of \$49.24. the landlords have provided copies of the receipt in documentary evidence. The landlords referred to their photographic evidence showing the pans and trim.

Painting and repair – the tenants' cat had caused damage to a wall and window sill from scratches. The landlords referred to their photographic evidence showing the areas damaged. These areas had to be repaired and repainted. The landlords seek to recover \$250.00 for the cost of this work and have provided the receipt from the painter in documentary evidence. The master bedroom where this damage was located was painted before the tenants moved into the unit.

Parking fob – the tenants were provided with a parking fob at the start of the tenancy and failed to return this when they vacated the unit. The standard charge from the Strata for a replacement fob is \$70.00. The landlords seek to recover this from the tenants.

Insurance deductible – during the tenancy in June 2015, the landlord was advised by email from the tenants that they had been running water in the kitchen sink into a pail. The water overflowed the sink and went into the unit below and the parking area. The strata insurance covered the damage claim; however, there was a \$5,000.00 deductible. The landlords' insurance company covered the Strata's deductible of \$5,000.00 but had a deductible of \$1,000.00. The landlords have provided the documents concerning this from their insurance company. The landlords seek to recover the \$1,000.00 deductible from the tenants as this damage was caused by their neglect.

The landlords seek an Order permitting them to keep the security and pet deposits to a total amount of \$850.00 in partial satisfaction of their claim and seek a Monetary Order for the balance including their \$50.00 filing fee.

The tenants testified to the following :

Dryer – they do not know how the dryer top became damaged the only things they placed on top of the dryer were plastic soap containers.

Carpets – the landlords told the tenants that they were going to replace the carpets so the tenants did not have them professionally cleaned before they vacated the unit.

Bulbs and tubes – the tenants were not aware they had to replace bulbs and tubes that had burnt out at the end of the tenancy. Some light bulbs were left for the bathroom in a cupboard.

Cleaning – the tenants had a professional cleaner come in and clean the unit for nine hours. They did not inspect the cleaning work after their cleaner had finished.

Deck – The professional cleaner was supposed to have cleaned the deck.

Closet shelving – The shelving came down in an earthquake. The tenants heard a noise but did not see the shelving had come down until later. A mirror also came down. The shelving was left in the closet.

Stove pans and trim – the stove pans and trim were cleaned during the tenancy. If there is damage then this is normal wear and tear and these can be replaced.

Parking fob – the tenants do not know what happened to the fob. It kept coming off the tenant's key chain.

Painting and repairs – when the tenants moved into the unit it had not been painted. The tenants agreed that their cat probably did this damage to the walls and windowsill.

Insurance deductible – the tenant was doing some cleaning in the kitchen. There were two fans going in the living room. The tenant went into the living room and did not hear over the fans that the water was overflowing. The kitchen sink does not have an overflow protection and there is no indent between the sinks for any water to overflow into the second sink. The tenant had previously mentioned this to the landlord. Due to this the tenants disputed the landlords' claim to recover the insurance deductible.

The tenants disputed the landlords' claim to keep the security and pet deposits.

The landlords testified that with regard to the closet shelving, it appeared that the tenants had used the closet for storage and removed the shelving. The landlords testified that the master bedroom had been painted prior to this tenancy commencing and the claim for painting is just for the damage done by the tenants' cat. The landlords testified that it is possible that the tenants did engage a professional cleaner as they had viewed the unit a few weeks before and it was even filthier. The landlords had concerns how the tenants were going to get the unit clean at the end of the tenancy due to how bad it was; however, the unit was not fully cleaned as shown in the landlords' documentary evidence of the move out report and the photographs.

Analysis

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.

Having considered the evidence before me I find that with regard to the landlords' claims for the following items that the landlords have meet the burden of proof and provided sufficient evidence to meet their claims as follows:

Dryer – the tenants testified that they did not know what caused the damage to the dryer but clearly the dryer top has been left in a damaged condition. I am satisfied that this damaged occurred during the tenancy and therefore a find in favor of the landlords' claim to recover the amounts of **\$140.00** plus **\$89.50**.

Light bulbs and tubes – the tenants agreed that they did not replace burnt out light bulbs and tubes. It is the tenants' responsibility during the tenancy to ensure any burnt out bulbs or tubes are replaced and at the end of the tenancy all bulbs and tubes should be in working order. As a result I find in favor of the landlords' claim as shown on their receipts for **\$47.58**.

Interior cleaning – The tenants testified that they had the rental unit professionally cleaned at the end of the tenancy. While the landlords do not dispute this, they testified that the unit still had areas which required additional cleaning and this work was completed by the landlords. I am satisfied from the evidence before me that the areas described by the landlords did require additional cleaning and I therefore find in favor of the landlords' claim to recover **\$150.00**.

Deck cleaning – I am satisfied from the evidence before me that the tenants failed to clean the deck at the end of their tenancy and that this work had to be completed by the landlords. I therefore find in favor of the landlords' claim for **\$50.00**.

Shelving – I am satisfied from the evidence before me that the tenants removed the shelving from the closet and failed to put this shelving back up. The tenants offered insufficient corroborating evidence to show that an earthquake was responsible for this shelving falling down. Consequently, I find in favour of the landlords' claim for **\$20.00**.

Stove pans and trims – I am satisfied that the tenants failed to leave the stove pans in the same condition they received them in. Even allowing for some normal wear and tear over a tenancy of

three years I would not expect to see stove pans and trims in this sort of condition as shown by the landlords' photographic evidence. Consequently, I find in favor of the landlords' claim to recover the costs to replace these as shown on the receipts of **\$49.24**.

Painter – the tenants agreed that their cat probably did the damage to the walls and window sill in the master bedroom. Consequently, I am satisfied from the evidence before me that this damage was caused from the tenants' cat and as a result I find in favor of the landlords' claim to recover the costs incurred to repair and paint this room of **\$250.00**.

Parking fob – the tenants agreed that they did not return the parking fob at the end of the tenancy. Although the landlords have not provided evidence of the actual cost to replace the fob, I am satisfied that fobs of this nature are charged by the Strata at **\$70.00** and accordingly I will allow this section of the landlords' claim.

Insurance deductible - I am satisfied from the evidence before me that the tenants were responsible for causing this damage when water flooded from their sink to the unit and parking area below. The tenants testified that they should not be held responsible for this damage as the sink did not have an overflow outlet or indentation to the second sink. If the tenants were aware that the sink did not have a method to deal with water overflowing then extra caution should have been applied when filling their pail at the sink. Consequently, I find in favor of the landlords' claim to recover the deductible charged by their insurance company of **\$1,000.00**.

I Order the landlords to keep the tenants' security and pet deposits to a total amount of **\$850.00** in partial satisfaction of the landlords' monetary claim, pursuant to s. 38(4)(b) of the *Act*. I further find the landlords are entitled to recover their filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* as follows:

Damage to dryer	\$229.50
Lights	\$47.58
Interior cleaning and deck cleaning	\$200.00
Refitting shelving	\$20.00
Stove pans and trims	\$49.24
Repair and painting	\$250.00
Parking fob	\$70.00
Insurance deductible	\$1,000.00
Filing fee	\$50.00
Less security and pet deposits	(-\$850.00)
Total amount due to the landlords	\$1,066.32

Conclusion

I HEREBY FIND in favor of the landlords revised monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,066.32**. The Order must be served on the respondents. Should the respondents 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: March 18, 2016

Residential Tenancy Branch