



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, MNSD, FF, O

For the landlord – MNR, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. 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 their security deposit and utility deposit; other issues; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent or utilities; 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 and utility deposit; 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 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, and the tenants were permitted to provide additional evidence after the hearing had concluded as this evidence was provided in January 2016 but was not in the tenants' file. 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 tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover their security and utility deposits?
- Are the landlords entitled to a Monetary Order for unpaid utilities?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security and utility deposit?

Background and Evidence

The parties agreed that this tenancy started on August 10, 2015 for a fixed term tenancy that was due to end on July 31, 2016. Rent for this unit was \$750.00 per month due on the 1st of each month. The tenants paid a security deposit of \$375.00 and a utility deposit of \$125.00. Both parties attended a move in and a move out inspection of the property. The tenancy ended on January 04, 2016 and the tenants provided a forwarding address on January 08, 2016.

The tenants' application

The tenant KE provided testimony on behalf of the tenants and testified that they had a mutual agreement to end the tenancy before the end of the fixed term. In this hand written agreement the landlord offered to pay the tenants \$750.00 if they moved from the unit by December 31, 2015. The tenants were unable to find a new home and did not move out until January 04, 2016. Regardless the tenants seek to recover the \$750.00 as agreed from the landlord.

The tenants seek to recover the security deposit paid of \$375.00 and the deposit paid for utilities of \$125.00.

The tenants seek to recover a further undisclosed monetary amount for the processing of photographic evidence and other evidence, for interest charged on their credit card for payments made in connection with these costs and for the filing fee.

The landlord disputed the tenants' claim for \$750.00. The tenants did not move out of the unit on December 31, 2015 and therefore they did not adhere to the agreement made.

The landlord disputed the tenants' claim to recover the security and utility deposits and this will be dealt with under the landlord's claim to keep the deposits.

The landlord's application

The landlord testified that when the tenants moved into the rental unit it was in a clean condition. The landlord referred to the notes made concerning the condition of the unit which has been signed by the landlord and KE who was acting as the tenants' agent. The landlord testified that the KE came and looked at the unit on August 08, 2015 when the landlords were still in the process of cleaning the unit after a previous tenancy. KE liked the unit and agreed to rent subject to references. The parties made an appointment to inspect the unit on August 09, 2015. The landlord testified that the move in report documents that the unit was clean throughout and that there was some burn marks on the bedroom carpets and some staining. The landlord testified that the unit had been painted in January 2015 and the walls were in good condition.

The landlord testified that at the move out inspection it was documented that the tenants did not leave the rental unit clean and there was some damage to the walls which resulted in some walls being repainted. The landlord testified that in addition to this the tenants refused to return the keys to the unit at the end of the tenancy.

The landlord referred to his claim which details the following items which were cleaned and repaired by the landlord and his wife:

Materials to clean and paint the unit - \$141.72

Time to pick up materials at \$20.00 an hour for 2.5 hours - \$62.50

Cleaning the kitchen – 3 hours work at \$20.00 per hour - \$60.00.

Cleaning the washroom by landlords wife 2.5 hours at \$20.00 per hour - \$50.00

Changing the locks including labour for 2 hours at \$25.00 an hour – 94.78

Carpet cleaning - \$158.03

The landlord testified that the tenants had paid utilities up to November 15, 2015; however, the period from November 16, 2015 to January 04, 2016 remain unpaid and the landlord seeks to recover \$268.88. The landlord testified that the bills go to the upstairs tenant and then these tenants share of 50 percent is calculated and the bills will be prorated up to January 04, 2016. The landlord based the amount due from a previous bill and the meter readings taken. The landlord agreed he has not provided a copy of the utility bills to the tenants or a written demand for payment. The landlord referred to the tenancy agreement which states the tenants must pay \$125.00 per month towards utilities and then the tenants will either owe money each billing period or if a refund is due it will be taken off the next bill.

The landlord seeks an Order to be permitted to keep the security and utility deposits in partial satisfaction of their claim and to recover the filing fee.

The tenants disputed the landlord's claim. KE testified that she did not view the unit on August 08, 2015. KE first viewed the unit for her parents on August 09, 2015 and at that time the landlords were cleaning the unit. KE agreed she did sign the move in report which stated all areas were clean as she trusted the landlords to finish off the cleaning before her parents moved in. KE testified that on the day her parents moved in she took photographs of the unit and these were discussed at the hearing. KE testified that her photographs show the unit was not clean when they moved in; there was a hole in the tile in the entry way; there was some bad flooring; there was dirt dust and spiders and insects in the window sills; the counter tops were dirty; the cupboards were dirty both inside and out; and the cupboards also needed painting. The unit was generally not clean and the floors and carpets had not been vacuumed. KE testified that it was stupid of her to have signed the move in report without seeing that the landlords were going to finish the cleaning. KE testified that she does not know when the unit had last been painted but it was not painted prior to this tenancy.

KE testified that there was one wall with some pencil marks drawn from her child and the tenants did not have time to clean these marks off. There were also two holes in the wall from hanging pictures. KE agreed the landlord may deduct an amount from their security deposit to remedy these damages.

The tenants disputed the landlord's claim for the costs to change the locks. KE testified that when she arrived at the unit on January 04, 2016 the landlord had already changed the locks.

The landlord did not ask for the keys. KE referred to a statement written from her witness who claims that they arrived with the tenants at 4.15 p.m. on January 04, 2016 as they got out of her vehicle she saw the landlord with a drill and he proceeded to change the locks. The female landlord RJ was already inside the unit.

KE testified that as the landlord had not even vacuumed or cleaned the carpets at the start of the tenancy then the tenants are not responsible to clean them at the end of the tenancy. The carpets were however vacuumed by the tenants. KE attended the move out inspection but refused to sign the report as the landlord would not let her make any amendments to it.

The landlord cross examined the KE and asked if she came to the unit on August 08, 2015. KE responded that she did not. The landlord asked if she responded to the advert. KE responded that yes then they tried to set up a date to see the unit but the landlord said his current tenants were difficult so KE viewed it on August 09, 2015 and the landlord and his wife were still cleaning the unit. The landlord asked if they went through the unit on August 09 and did KE sign the report. KE responded that she was hesitant to sign but was trusting of the landlord's wife when she said the cleaning would be finished and the tenants could take pictures when they moved in. The landlord asked if the tenants moved out by 7.00 p.m. then when did they clean the unit. KE responded that all the larger things had been moved out already and she went back to vacuum as the landlord was complaining all they had left to do was to sweep the floors on January 04, 2016.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenant's application – the agreement in place between the parties clearly states that the tenants will receive \$750.00 if they vacate the rental unit on December 31, 2015. The tenants agreed they did not vacate until January 04, 2016 and therefore I find the tenants did not abide by the terms of this agreement and the agreement is null in void. Consequently, the tenants are not now entitled to recover the \$750.00 mentioned in that agreement and this section of their claim is dismissed.

With regard to the tenants' claim to recover the security and utility deposits – I will deal with this section of their claim under the landlord's application.

With regard to the tenants' claim to recover costs associated with providing evidence for this hearing. There is no provision under the Act for a monetary award to be made to claim costs incurred to produce evidence for a hearing. Consequently, this section of the tenants' claim is dismissed.

With regard to the landlord's application – The landlord has claimed an amount for damages to the rental unit. 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 have considered the evidence before me and find there is insufficient evidence to show that the unit was in a clean condition at the start of the tenancy. I am not persuaded by the landlord's documentary evidence in the form of the hand written inspection report and find I prefer the tenants' evidence in the form of photographs taken on the day the tenants moved in, which show that the rental unit was not offered in a clean or well cared for condition. Consequently, there is no onus on the tenants at the end of the tenancy to leave the rental unit reasonable clean; however, in this regard I find that the rental unit was left in a reasonable clean condition at the end of the tenancy and the tenants' evidence supports this. I find therefore that the landlord has not met the burden of proof and their claim for cleaning and painting the unit must fail.

The tenants do agree the landlord may deduct an amount to clean one wall from pencil markings and to repair two holes. The tenants did not specify an amount and left this to my discretion. I therefore find the landlord is entitled to recover **\$25.00** to wash the pencil marks from the wall and **\$25.00** to repair the minor nail holes in a wall.

With regard to carpet cleaning; at the start of the tenancy the landlord must provide the rental unit with clean carpets. The landlords has insufficient evidence to show the carpets were cleaned at the start of the tenancy and therefore the landlord may not make a claim against the tenants for carpet cleaning at the end of the tenancy.

With regard to changing the locks; KE testified that the landlord changed the locks prior to the tenants fully vacating the unit and had changed them before they returned to the unit on January 04, 2016 without requesting the keys back from the tenants. The landlord referred to his receipt to purchase the new lock and this receipt shows the lock was purchased on January

05, 2016 the day after the tenants vacated. The tenants witness statement says that she saw the landlord with a drill and the locks had been changed; however, this witness was not asked to attend the hearing and did not describe how she had knowledge that the landlord had changed the locks just because she saw him with a drill. The tenants have an obligation to return the keys at the end of the tenancy and I find that they failed to do so. I therefore find in favor of the landlord's claim to recover the costs incurred to change the locks of **\$44.78** for the new locks and **\$50.00** for labour.

With regard to the landlord's claim for utilities; the landlord is required to provide the tenants with a copy of the utility bills and a written demand for payment within 30 days regardless of any term in the tenancy agreement. The landlord agreed he has not done so for the last billing period. I caution the landlord to provide copies of the last hydro and gas bills to the tenants for the period from November 15, 2015 to January 04, 2016 and a written demand for payment within 30 days. If the landlord has not already done so he must also provide the tenants with all copies of utilities to determine any under or overpayments made during the tenancy and a document to detail all payments due and made. This section of the landlord's claim is dismissed with leave to reapply and the matter of the deposit held for utilities must be accounted for in any further claim.

As the landlord's claim has some merit I find the landlord may deduct the following amounts from the security deposit pursuant to s. 38(4)(b) of the Act:

Wall cleaning and repair	\$50.00
Changing the locks	\$94.78
Total amount to be deducted from security deposit	\$144.78

The balance of the security deposit of **\$230.22** must be returned to the tenants pursuant to s. 38(6)(b) of the Act.

As both parties claims have some merit both parties must bear the cost of filing their own applications.

Conclusion

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 **\$230.22**. The Order must be served on the landlord. Should the landlord 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.

The landlord may keep **\$144.78** from the security deposit.

The landlord is at liberty to reapply for unpaid utilities after the tenants have been sent copies of the bills and a written demand for payment. The utility deposit held in trust will be dealt with at that time or returned to the tenants.

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: August 25, 2016

Residential Tenancy Branch