



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, OLC, FF

For the landlord – MND, MNR, 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 to recover the security deposit, for an Order for the landlord to comply with the *Residential Tenancy Act (the Act)*, regulations or tenancy agreement; 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 deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants 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. 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 to recover double the security deposit?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on May 22, 2014. Rent started at \$1,400.00 per month and was increased to \$1,435.00 per month during the tenancy. The tenants paid a security deposit of \$700.00 on May 22, 2014.

The tenants' application

The tenants testified that the landlord did not complete a move in condition inspection report with the tenants at the start of the tenancy but rather did a walk through with the tenants and then filled in the report afterwards. The tenants testified that they can see from the landlord's evidence that she claims she left them the move in condition inspection report to sign but as would have occurred in May 2014 the tenants do not recall all the details but testified that if the landlord had asked them to sign and leave the report for her then they would have done so in the box outside the unit where they left their rent cheques. The tenants testified that they did not later receive a copy of the report from the landlord.

The tenants testified that they provided their forwarding address at the end of the tenancy to the landlord by text message. The tenants testified that they seek to recover double the security deposit from the landlord as it was not returned within 15 days of the end of the tenancy.

The landlord testified that the move in inspection was done with the tenants when they took possession of the rental unit. The landlord then told the tenants she wanted to meet with them to fill in the inspection report. On May 25, 2014, RW called the landlord to report some problems with the kitchen and bathroom faucets and when the landlord went to look at these issues she brought the move in inspection report with her which she had previously filled out after they had all walked around the unit. The landlord testified that she asked the tenants to check the inspection report over and to meet with the landlord again. On May 26 the landlord called the plumber and arranged that he would go to the unit the next day. The landlord was at the unit and left a note for the tenants for them to sign the move out inspection report and leave it in the kitchen for the landlord.

The landlord testified that the tenants also reported a problem with the kitchen lights. At that time the landlord left a second note for the tenants reminding them to sign and leave the inspection report. The tenants never returned the inspection report to the landlord. The landlord testified that she was extremely busy at the time as she was doing building work and did not have the time to remind the tenants again to return the report. After asking for it twice the landlord testified she then forgot about it until the tenants were vacating and she realized she did not have the move in report.

The landlord testified that she asked RS if she still had the move in report and was told she had left it at home. Due to this the landlord used a blank report to do the move out inspection. During the move out inspection the tenants walked out three times and the report was not completed.

The tenants testified that they are sure they would have returned the inspection report and if not the landlord should have prompted the tenants to return it again.

The landlord testified that she did get a text message from RW in April with a forwarding address for the tenants; however, this address was incomplete and did not show the postal code. The landlord testified that as soon as she received the tenants' application showing their full address she filed her application for dispute resolution.

The tenants seek an Order for the landlord to comply with the *Act* with regard to the return of their security deposit. The tenants also seek to recover their filing fee of \$100.00.

The landlord's application

The landlord testified that the tenants have an outstanding rent payment for August, 2014. The cheque provided by the tenants was returned due to insufficient funds. A copy of this cheque and bank information has been provided in documentary evidence. The tenants were informed of this by letter asking them for a replacement cheque and the late fee, NSF fees and bank fees as provided for in the tenancy agreement. The tenants never responded to that letter; however, as the landlord was so busy at that time she could not keep up with everything and so did not ask the tenants to pay the rent for August, 2014 again until this application was filed.

The landlord testified that the tenants had provided three other cheques which were unsigned. The landlord had a meeting with the tenants concerning this and RW gave the landlord a replacement cheque for October, November and December, 2014; however, no cheque was provided for August, 2014. The landlord agreed that as she was so busy she did not always present the rent cheques on the first of each month or even in the month that rent was due. The landlord seeks to recover \$1,400.00 for unpaid rent for August, 2014, \$25.00 for a late fee for that month, \$25.00 for an NSF fee for that cheque and \$7.00 for the bank charges incurred.

The tenant RS testified that she wrote the rent cheque for the first of each month. The landlord was given three postdated cheques at a time. The landlord never chased them and if she presented them much later this could be why she could not cash them. The only cheque that came back NSF was one in November, 2015 when the landlord's bank tried to cash the same cheque twice. The tenant's referred to their documentary evidence showing the letter from the bank confirming this.

The tenant testified that this is the first time they have heard of unpaid rent for August 2014. The tenants testified that if their cheque was NSF they would have provided the landlord with a new cheque or paid the rent as soon as they were informed. The tenants were permitted to provide evidence after the hearing concluded to confirm they paid their rent for August, 2014. The tenants provided copies of the rent cheques for 2014 and their bank statements for that year.

The landlord testified that the tenants did not leave the rental unit clean at the end of the tenancy. The landlord had new tenants moving in the next day so she had to engage the services of a cleaner. The landlord referred to the cleaner's invoice in documentary evidence which details the areas of the unit cleaned. The invoice shows the cleaner had to clean the stove twice and the sides of the stove, the hood and the exhaust fan. The pans and rings under the heating elements were also cleaned. The floor under the appliances had to be cleaned. The fridge inside and out was cleaned along with the kitchen sink, windows and track and the, balcony door glass and track. In the bathroom the bathtub was cleaned along with the grout and tiles, the vents, the sink, and the mirror. All baseboards were cleaned and the inside of the closet and doors were cleaned. The landlord testified that the cleaner spent four hours cleaning and charged the landlord \$138.60 for her work. The landlord seeks to recover this from the tenants.

The landlord testified that the tenancy agreement contains a clause #23 which states that the blinds must be professional cleaned at the end of the tenancy. The tenants were provided the address and phone number for the blind cleaning company and the tenants informed the landlord that they were taking the blinds to be cleaned. The tenants were asked to provide a receipt for cleaning the blinds and they failed to do so. The landlord testified that the blinds had not been professionally cleaned by the tenants and therefore the landlord had to spend time taking them down, taking them to be cleaned and refitting them. The landlord seeks to recover \$155.93 for the cost to clean the blinds and \$40.00 for her time to deal with this. The landlord has provided the invoice for the blind cleaning in documentary evidence.

The landlord testified that there is a clause #14 in the tenancy agreement that states: "Hooks, nails, tapes, or other devices for hanging pictures or plants or for affixing anything to the rental unit will be of a type approved by the landlord and used only with the landlord's prior written consent". The landlord testified that the tenants did not obtain consent to use picture hooks in the walls and at the end of the tenancy the landlord had to remove these and her painter had to mud and repaint these areas. Furthermore, where the tenants had washed the walls there were smudges left on the walls. The landlord testified that it was cheaper to repaint the walls rather than have her cleaner come back to clean the walls again. The landlord testified that there was also damage done to the entrance door and frame to the unit and a door in the common area hallway. The tenants were storing their bikes in the unit despite instructions not to do so and these could have caused the damage to the doors. The landlord testified that she engaged other painters to do this work. The landlord seeks to recover \$300.00 for painting and has provided the painters invoice for the interior of the unit dated April 01, 2016 for \$126.00 and the painters invoice for the exterior doors dated September 08, 2016 for \$141.75.

The landlord testified that the tenants did not replace all the burnt out light bulbs in the unit. Some of the fixtures had three to five bulbs each and only one bulb was working in a fixture. The landlord asked her son to come and replace the burnt out bulbs. Five bulbs were replaced and these were taken from the landlord's stock so there is not a receipt for the bulbs. The landlord testified that her son also had to spend time cleaning the shades. The landlord seeks to recover \$46.00 for her son's time and for the five replacement bulbs.

The landlord testified that the tenants did not return all the keys to the unit. The landlord and tenants had arranged to meet at the unit at the end of the tenancy. The tenant RW sent a text saying he was a few minutes late. When he arrived in the building he told the landlord he had forgotten his keys but as the landlord had a master key to the unit it was not an issue. The other tenant RS joined them and she left her three keys. RW never returned his key or the key to the mailbox. The landlord had to have a locksmith out to rekey the locks to the unit and to replace the lock and key to the mailbox. The landlord

referred to the invoice from the locksmith in documentary evidence and seeks to recover the amount of \$149.34.

The tenants disputed the landlord's claims. The tenants referred to their photographic evidence which shows the unit was left very clean at the end of the tenancy. The tenant RW agreed that the only thing they did not clean was the sides and floor under the stove as the tenants were reluctant to move this. The tenants testified that the oven was as clean as they could get it and it was left in the same condition as it was in at the start of the tenancy. RS testified that she cleaned the stove top and, the hood and the exhaust fan was taken apart to clean using a list of cleaning products provided by the landlord. The tenant referred to their photo of the fridge and testified that this shows how clean the fridge was and that they had defrosted the freezer. The windows were also all cleaned and the door trims were cleaned and left in the same condition as they were at the start of the tenancy.

The tenants referred to their photos of the bathroom and testified that this whole area was cleaned; the grout, tiles and tub were as clean as they were at the start of the tenancy. The fan was cleaned but not the fan mechanism inside which may have dropped dust or hair into the tub after the tenants had cleaned. The tenants do not recall blue marks left on a windowsill but testified that they did not cause these marks and they could have been there when they moved into the unit. RS testified that she wiped all the walls down as requested by the landlord; however, you could still see the wet marks made by the cloth while it dried, but this would not be sufficient to have the walls repainted.

The tenants testified that they did not have the blinds professionally cleaned but rather they decided to clean them themselves. The blinds were cleaned to a good standard and were left immaculately clean.

The tenants agreed they did put two picture holes in the walls but any further picture hooks were there at the start of the tenancy. The tenants agreed they should have

asked the landlord's permission to put two extra picture hooks into the walls. The tenants testified that the walls were all cleaned and they disputed the landlord's claim for painting the walls and for damage to two exterior doors.

The tenants testified that they replaced any light bulbs that they noticed had burnt out. There were some that appeared to be working but it was difficult to see if one was working in the fixture. Some of the light fixtures could not be reached by the tenants and some were painted over.

The tenant RW testified that when he arrived at the building to meet the landlord he did not have his keys with him as he had left them in the car; however, RS brought these keys up with her when she came to the unit. All the keys were returned to the landlord including the only mail box key the tenants were given as this was on RS's key ring. The tenants do not know why the landlord would have paid to have the locksmith out unless she just wanted extra keys to the unit.

The landlord testified that she called the locksmith and the cleaner on March 31, 2016 so the unit could be ready for the new tenants moving in the next day. The landlord testified that there was no financial gain for her to do this work if it was not required.

The landlord asked the tenants why they did not ask her about the cleaning process for moving the stove. The tenants responded that there were no instructions on the cleaning list about moving the stove out. The landlord asked RS where it says on the cleaning list about products to use for the stove. RS responded that this was a conversation between them. The landlord asked why the tenants kept saying they were going to have the blinds and unit professionally cleaned. RS responded that they had texted the landlord separately not knowing the other tenant had already sent a text message. When they looked at the blinds they decided to clean them themselves.

The tenants asked the landlord if the landlord thought new tenants could have reasonably moved into the unit the next day. The landlord responded no it needed

cleaning and painting. The tenants asked why the landlord is only telling the tenants today about unpaid rent for August, 214. The landlord responded that she was going to go over it with the tenants when they did the inspection for the security deposit statement but RW left twice and RS got upset when it was mentioned it and said she was never late with her payments. The tenants asked why the landlord claimed she had returned the tenants' postdated cheques in her evidence. The landlord responded that she had the cheques with her at the inspection for April and May, 2016. RS was supposed to meet with the landlord the next day and compare the move in report to the move out report. The landlord intended to return the cheques then; however, the tenants did not meet with the landlord again. The landlord agreed to return these two cheques to the tenants after the hearing.

The landlord seeks an Order to be permitted to keep all of the security deposit to offset against her monetary claim. The landlord also seeks to recover her filing fee of \$100.00.

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 tenants' application to recover double the security deposit. I refer the parties to s. 23(1), 23(4) and 23(5) of the *Act* which states:

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(4) *The landlord must complete a condition inspection report in accordance with the regulations.*

(5) *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.*

The landlord testified that she did the inspection with the tenants and later filed in the inspection report and left it for the tenants to sign and return to the landlord. The landlord alleges that the tenants did not return the inspection report and the landlord was unable to produce it to the do the move out inspection. The tenants disputed this and testified that it is likely they did return the inspection report to the landlord.

As the landlord is required to do this inspection report with the tenants at the time of the inspection and detail the condition of the unit when the tenants took possession of the rental unit then without a copy of this report I am unable to verify the details showing the condition of the unit at the start of the tenancy. As it is the landlord's reasonability to ensure she has a copy of the report and a copy is provided to the tenants within seven days of the inspection then I must find there is insufficient evidence to show the condition of the unit when the tenants moved in.

However, I am not satisfied that this would be sufficient to extinguish the landlord's right to file a claim to keep the security deposit for damages and in any event the landlord has also filed a claim to keep the security deposit against unpaid rent.

I will therefore deal with the issue of the tenants' forwarding address. S. 38 of the *Act* requires the tenants to provide a forwarding address in writing to a landlord. The landlord then has 15 days in which to either file a claim to keep all or part of the security deposit or return it to the tenants. If the landlord fails to do this then the tenants are entitled to recover double the security deposit.

I find the tenants forwarding address was only provided by text message and that this was incomplete as it did not contain their postal code. Text messaging is not considered to be a method to provide a forwarding address in writing. Consequently, I find the tenants have not yet provided their forwarding address to the landlord in writing and therefore their claim to recover double the security deposit is premature. I will therefore deal with the matter of the security deposit under the landlord's application.

With regard to the tenants' application for an Order for the landlord to comply with the *Act*, as the tenants have not yet provided a forwarding address in writing to the landlord then this section of their claim has no merit and is dismissed.

As the tenants' application has no merit the tenants must bear the cost of filing their own application.

With regard to the landlord's application to recover unpaid rent for August, 2014; the tenants have provided copies of cheques written and cashed for 2014 plus copies of bank statements for 2014. These bank statements indicate that an internet transfer was made on August 25, 2014. The tenant's bank statement does not indicate that a check was returned due to insufficient funds although the landlord's evidence does support this. The tenants' evidence shows that the September, 2014 rent cheque was reversed on September 30, 2014 but October's rent cheque was cleared. In December, 2014 the tenants' rent cheque for three months was cleared. I must conclude therefore from the evidence provided by the tenants' bank statements that the rent for August was paid on August 25, 2016. The landlord has insufficient evidence to dispute this. The landlord's application for unpaid rent for August is therefore dismissed; however as the rent was not paid until August 25, 2014 and there was clearly an NSF cheque and bank fees incurred by the landlord then I will allow the landlord's claim to recover **\$57.00** from the tenants as there is a clause in the tenancy agreement relating to late fees and NSF fees.

With regard to the landlord's application to recover cleaning costs of \$140.00; as indicated above the landlord was not able to provide the move in inspection report. The purpose of doing the inspection reports is to provide evidence of the condition of the unit at the start and end of the tenancy. Without the move in inspection report there is insufficient evidence to support the landlord's claim that the rental unit was thoroughly clean at the start of the tenancy. The landlord has provided some photographic evidence and an invoice from her cleaner detailing the work required. The tenants have provided photographic evidence showing the unit was left reasonable clean. The

landlord has provided photographic evidence showing some cleaning was required. The tenants testified that the only area not cleaned was under the stove. The landlord has claimed for cleaning the fridge; however, the tenants' evidence shows the fridge was left clean. Therefore with regard to the overall cleanliness of the unit I refer the parties to s. 32 of the *Act* which says 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 landlord has not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Consequently, this section of the landlord's claim is dismissed.

With regard to the landlord's claim for the professional cleaning of the blinds; the tenancy agreement says that the blinds must be professionally cleaned at the end of tenancy. The landlord has shown that the blinds were professionally cleaned at the start of the tenancy. The tenants testified that they cleaned the blinds themselves and that they were left immaculate. The landlord has insufficient evidence to show that the blinds were not left reasonably clean as there are no notations made on the move out inspection report. As s. 32 of the *Act* requires the tenants to leave the unit reasonably clean, then the term in the tenancy agreement which forces the tenants to have the blinds professionally cleaned is contrary to the *Act* and therefore not enforceable. Without evidence from the landlord to show the blinds were not reasonable clean I must dismiss the landlord's application for \$195.93.

With regard to the landlord's application for costs incurred to paint the rental unit; the tenants agreed they did put up two picture hooks without the landlord's permission but also testified that at the start of the tenancy there were other picture hooks left in the walls. Without the move in condition inspection report, it is simply one person's word against the other that all the picture hooks were put in by the tenants. Furthermore, I am

not satisfied that the landlord could not have mitigated the loss by paying her cleaner a lower hourly rate to wipe the smudges of the walls rather than have the walls repainted.

The landlord has also claimed for the painting and repair to two exterior doors; one to the tenants' unit and one in the common area of the hallway shared by another tenant. The tenants disputed causing any damage to these doors and without further evidence from the landlord to show the tenants were responsible for damage to both doors I must dismiss this section of the landlords claim. The landlord has claimed a total amount of \$300.00 for painting, yet both invoices together only come to an amount of \$267.75. As I am not satisfied the landlord has fully met the burden of proof or mitigated the loss by having her cleaner wipe down the walls; I must limit the landlord's claim to **\$50.00** for filling, sanding and touch up painting of the two picture hooks put in by the tenants.

With regard to the landlord's application for replacing burnt out bulbs; I am satisfied from the evidence before me that the tenants did not replace all the burnt out bulbs and that the landlord's son had to clean the shades and replace five bulbs. I find the amount claimed of \$46.00 for the replacement bulbs from the landlords stock and for the landlord's son's time to be a reasonable charge. I therefore find in favor of the landlord's claim for **\$46.00**.

With regard to the landlord's claim for the locksmith charges; the tenants testified that they did return all the keys including the mailbox key. The landlord testified that only three keys from RS were returned and this did not include the mailbox key. I find on a balance of probabilities that the tenants failed to return all the keys as there would have been no reason or financial gain to the landlord to engage the services of a locksmith to carry out this work if the keys had been returned. Consequently, I find in favor of the landlord's claim to recover the amount of **\$149.34**.

The landlord is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the Act.

As the landlord's application has some merit, I find the landlord is entitled to retain **\$402.34** of the security deposit pursuant to s. 38(4)(b) of the *Act*. As the landlord is only entitled to retain a portion of the security deposit, the balance of the security deposit must be returned to the tenants.

NSF fees, Late fees and bank charges	\$57.00
Painting	\$50.00
Light bulb replacement	\$46.00
Locksmith charges	\$149.34
Filing fee	\$100.00
Total amount due to the landlord	\$402.34
Less security deposit	(-\$700.00)
Balance of security deposit to be returned to the tenants	\$297.66

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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord may retain the amount of **\$402.34** from the security deposit held in trust by the landlord. The reminder of the landlord's claim is dismissed without leave to reapply.

The tenants' application is dismissed without leave to reapply; however, the tenants' decision will be accompanied by a Monetary Order for the balance of the security deposit for **\$297.66** dealt with under the landlord's application. 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.

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: October 06, 2016

Residential Tenancy Branch

