



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND' MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The application made on June 13, 2016 set out a claim in the sum of \$1,500.00. A detailed calculation of that claim was not supplied with the hearing documents that the tenants confirm were received by the end of June 2016.

The tenants confirmed receipt of evidence supplied by the landlord on November 22, 2016. That evidence included 33 coloured photographs, 15 pages of text and a calculation of the claim made. The tenants said they were prepared to respond to the claim.

I noted that the landlord has claimed items allegedly stolen. The landlord was informed that testimony would not be taken in relation to that portion of the claim. Theft is not a matter that falls within the jurisdiction of the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

Is the landlord entitled to compensation for damage or loss under the Act?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced on September 1, 2014 and at the end of the one year term converted to a month-to-month tenancy. Rent was \$1,350.00 per month due on the first day of each month. The landlord is holding a security deposit in the sum of \$675.00. A copy of the tenancy agreement signed on September 1, 2015 was supplied as evidence.

A move-in condition inspection report was completed on July 29, 2014 and signed by both parties.

The tenancy ended at the end of May 2016. A move-out condition inspection report was completed on May 28, 2016. Notations were made on the report that the floor was scratched in the kitchen, living room and dining room and that the lawn had not been mowed. The male tenant signed agreeing the report fairly represented the condition of the rental unit. The tenants provided their forwarding address on the report. The landlord filed claiming against the deposit on June 13, 2016; the fifteenth day after May 28, 2016, as the day prior to filing was a Sunday.

The landlord has made the following claim:

Repair floors	\$711.76
Wash walls	400.00
Clean up yard and mow lawn	200.00
TOTAL	\$1311.76

The flooring was installed just prior to the start of the tenancy.

The landlord said that after the move-out inspection they noticed additional scratches in the flooring. Photographs taken of the floor show one area that appears to be damaged by furniture. Several other scratches can be seen in other close-up pictures. The landlord said that laminate in a bedroom was damaged due to moisture that came through a window.

The landlord supplied an undated estimate issued by a flooring manager. The estimate includes an assessment that floor protection was not apparently used under living room furniture; that laminate had been damaged by moisture from something that spilled or the window being left open; a cigarette burned vinyl by a front exterior door and a vinyl seam that is lifting needs repair. The quote was in the sum of \$711.76.

The landlord has charged 20 hours at \$20.00 per hour to wash the walls of the rental unit. The unit was meant to be non-smoking. There is no term prohibiting smoking. After the tenancy commenced the landlord sent the tenants an email telling them the

unit was non-smoking. After the tenants had vacated the landlord noticed the walls were covered in nicotine; this was not notated on the inspection report. Areas where pictures had been hung on the walls could be seen outlined with some sort of yellow substance which the landlord submits is nicotine. Photos were supplied of the walls. One photo of a cloth used to wipe a wall showed a significant amount of yellow substance on the cloth. A bedroom had mold growth in an area where a wardrobe supplied by the landlord had been placed. The landlord supplied an email sent by the tenants on May 2, 2016 stating that cleaning the floors and dirt on the floors would be completed, but that walls were normal wear and tear.

The landlord submits that 10 hours was spent at the cost of \$20.00 per hour for the landlords' time, to clean up the yard and mow the lawn. Photos supplied showed the lawn in need of cutting.

The tenants responded that they did cause some damage to a floor, in one corner where the couch had been placed. The tenants said that the landlord had brought a fridge into the home via the front door and that the landlord had caused additional damage to the floors, which the tenants said, could be seen in several of the landlords' photos. The tenants said they did not know anything about water damage to the bedroom floor.

The tenants said that the email dated May 2, 2016 was sent in anger and that the tenant had apologized. The tenant said the walls were washed. Several letters from friends of the tenants were supplied as evidence. These letters indicated that the friends had helped the tenants clean the unit. One person helped to scrub the walls and writes that the home was clean when the tenants vacated on May 1, 2016. Another person writes that they were present with five people who were cleaning the rental unit during the last week of April. This person states that the walls were scrubbed.

A plumber who had previously been in the house to complete work for the landlord supplied a note stating the home had been neat and tidy several months earlier.

The tenant said the home had forced air heat and that any residue on the walls was caused by the furnace. The tenants did smoke but always smoked outside. The home had also flooded previously and there were dried feces under the house where the septic line had broken, which could have caused the walls to become coated with a substance.

The tenant had mowed the lawn the month prior to vacating. The keys to the unit were given to the landlord on May 15, 2016. The tenants drove by the unit two weeks after the tenancy had ended the lawn had not been mowed. The male tenant said he could have returned to mow the lawn and did not think the landlord would make an issue out of the mowing. The tenants said that nothing needed to be cleaned up in the yard; any pots or items left had belonged to the landlord. The tenant could mow the front, side and back of the lawn in 45 minutes.

The landlord said that the tenants gave them the keys on May 28, 2016; the date the inspection occurred. The keys were not returned in mid-May. The tenants did not have to pay rent for the last month of the tenancy as they had been given a two month Notice to end tenancy for landlords' use of the property.

The landlord agreed the tenants had been seen smoking outside. The plumbing had leaked prior to the time of this tenancy. A restoration company had fully repaired the leak and there was no contamination under the home. The landlord said the furnace is electric forced air and does not cause any coating on walls.

Analysis

A party that makes an application for monetary compensation has the burden to prove their claim. The burden of proof is based on the balance of probabilities. An applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find that the landlord and tenants complied with section 35 of the Act by arranging and attending a move-out condition inspection report. The reports signed and agreed to by the tenants acknowledged some scratches to the floors in three areas of the home, plus the need for lawn mowing. No other deficiencies were agreed to or indicated on the report.

The Residential Tenancy Regulation provides:

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 must find, on the balance of probabilities that the state of the rental unit was not accurately reflected on the report signed at the end of the tenancy.

From the evidence before me I find that the tenants did cause some damage to the floor. However, I am not convinced that the tenants caused damage to the linoleum.

This was not reflected in the report and there was no evidence before me to convince me that the tenants caused this damage.

Section 37(2) of the Act provides:

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the evidence before me I find that the rental unit was left with some damage and the need for wall cleaning.

The tenants had confirmed that their furniture did cause some damage in the living room. I found the tenants testimony convincing, that the landlord had also caused some damage when a fridge was brought through the living room. This was not disputed directly by the landlord. If the flooring had been damaged in the bedroom I would have expected to see that recorded on the inspection report; it was not. In the absence of any record of that alleged damage I find that the tenants cannot be held responsible.

Therefore, I have reduced the sum claimed by the landlord for floor repair to a reasonable amount for the living, dining room and kitchen to \$400.00. The balance of the claim for flooring is dismissed.

In relation to wall washing, despite the tenants assertion that they and some friends cleaned the walls I find that the evidence supplied by the landlord more reliable. The photos of the walls, the cleaning cloth that is yellowed from wiping the wall, all point to what I find was a deficit in cleaning to a reasonable level by the tenants. There was no evidence that the furnace caused this problem. Further, when the tenants said the walls could be in need of washing due to the furnace I find the tenants' own testimony was undermined. Either the tenants had washed the walls or they had not. If they had been washed the walls would have been clean. I gave the letters little weight as those parties were not present to be cross-examined by the landlord.

Therefore, I find that the landlord is entitled to the sum claimed, \$400.00, for the time the landlord took to clean the walls.

In relation to the lawn mowing I find that the inspection report provided an accurate reflection of the need for mowing. However, I find the claim made by the landlord far exceeds the time it could reasonably take to cut the lawn and have reduced the sum to \$75.00. The tenant said he could cut the lawn in 45 minutes; I find that due to the longer grass the time required would be extended. There was no evidence before me of

any cleaning that was required to the yard and no mention of that need in the inspection report. The balance of the claim for mowing and yard cleaning is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Repair floors	\$711.76	\$400.00
Wash walls	400.00	400.00
Clean up yard and mow lawn	200.00	75.00
TOTAL	\$1311.76	\$875.00

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$675.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary order for the balance of \$300.00. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to compensation in the sum of \$875.00. The balance of the claim is dismissed.

The landlord may retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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: December 09, 2016

Residential Tenancy Branch