



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MND, MNSD

For the tenants – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for damage to the unit, site or property and for an Order permitting the landlord to keep all or part of the tenant's security deposit. The tenant applied for a Monetary Order to recover double the security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant, a witness for the tenant and a landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other and witness 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. 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 unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Is the tenant entitled to a Monetary Order to recover double the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2011. Rent for this unit had increased over the tenancy to \$2,675.00 per month. The tenant paid a security deposit of \$1,250.00 on April 13, 2011.

The landlord testified that they purchased the property and the sale was completed on July 31, 2016. The sale was supposed to have completed earlier; however, the previous owner delayed it until this date. The previous owner had served the tenant with a Two Month Notice to End Tenancy on May 01, 2016 because the new owners wanted to reside in the home. The tenants vacated the unit on July 31, 2016 in accordance with this Notice.

The landlord testified that they were given the security deposit from the previous landlord but were not provided with a move in condition inspection report. On the day the tenant moved out the landlords were not in town as they were on a previously planned trip. The tenant was informed of this and they agreed to do a move out inspection of the unit on August 11, 2016 when the landlords returned home. The landlord agreed that they had moved their belongings into the unit after the tenant vacated and before the inspection was completed and had a painting company in to paint the unit while they were away.

On August 11, 2016 the tenant did attend the move out inspection and the landlord had already completed the inspection report and also filled in the move in inspection with check marks indicating that everything was good at the start of the tenancy. The landlord testified that he did this as the previous landlord had informed him that the unit was brand new at the start of the tenancy. The report therefore only required the tenant's signature. The landlords had found some damage to the base of a bathroom cabinet which had ring marks and damaged wood where liquid had cracked the surface and swollen the wood. The cabinet could not just be simply repaired and the base and sides have to be replaced. The landlord referred to a quote from a company for \$875.00 plus GST of five percent.

The landlord testified that the carpets were also found to be stained. These stains were prominent and in a visible area of the carpet. The landlords at first thought this staining could be removed by cleaning the carpets professionally; however, when the carpet cleaner came he has documented that the carpets are not stained but rather the fibers are damaged from some sort of harsh chemicals used on them which were not suitable for this type of carpet. The landlords contacted the painting company and were told they had used drop sheets and there had been no spillage or cleanup of paint. The landlord testified that when they had visited the house with the intention of purchasing it there was no noticeable staining on the carpet. The landlords

testified that the quote to replace the carpets is \$2,472.78 and a copy of the quote has been provided in evidence. The landlord testified that the carpets and cabinet were five years old.

The landlord testified that due to these damages the landlords seek an Order permitting them to keep the security deposit and to recover the balance of the costs incurred of \$2,141.53.

The tenant disputed the landlords' claims. The tenant testified that they were not given a copy of the move in inspection report at the start of the tenancy by their previous landlord. This landlord did not complete the move out report with the tenant; it was already filled in when they went to do the inspection. Prior to the move out report being completed the landlords had already moved into the unit and had it painted throughout. The tenant testified that they had no knowledge of any damage to the bathroom cabinet and had cleaned the carpets with their own carpet cleaner and regular solution. They had never been informed that they had to use anything special to clean the carpets and they did not notice any staining on the carpets when they moved out.

The tenant testified that they do not know if the unit was brand new when they moved in in 2011 or whether other tenants had occupied the unit. Any damage done to the cabinet and carpets could have been caused by the landlords' contractors who were in the unit after the tenants moved out. The tenant testified that the entire unit was left in good standing and was immaculate. The staining shown on the carpets is no more than 12 inches in size.

The tenant's witness who was another occupant of the rental unit and the tenant's husband, testified that the landlord had two months to arrange an inspection of the unit or for someone else to do an inspection for him as suggested by the tenants. It was not until after the tenants moved out that the landlord said there was staining on the carpets and ring marks in the cabinet. Then the landlord informed the tenants he wanted to replace the cabinet and carpet. Anything could have happened to the cabinet and carpet after the tenants moved out. The witness testified that he never noticed any damage to the cabinet or carpet at the end of their tenancy.

Analysis

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

In consideration of the claims made concerning the move in and move out inspection reports. If the original landlord failed to provide a copy of the move in report to the tenants at the start of the tenancy or to the new owners when they purchased the property I am not satisfied that this new owner can be held responsible for the actions of another unconnected landlord. The move out report may have been completed by this landlord prior to the inspection taking place; however, the tenants were then given the opportunity to attend the inspection and could have agreed or disagreed with the findings of the report but instead the tenant chose not to sign the report as she disagreed that they were responsible for the damages shown on the report. With regard to the landlord arranging the move out inspection with the tenants; I refer the parties to s.35(1) of the *Act* which states:

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.*

While the day selected for the inspection was agreed upon by both parties; as the landlord had not only moved their possessions into the rental unit before this date and therefore occupied the unit, they also had painters in to paint the entire unit prior to this date. Consequently, I find the landlords and tenant did not inspect the rental unit before the landlords moved in and therefore I can place very little weight on the findings of that inspection report as it does not necessarily show the condition of the rental unit when the tenants moved out and before the landlords moved in.

With this in mind I will direct my decision to the landlords' claim for damage to the bathroom cabinet. Clearly this cabinet has suffered some damage and the landlord's photographic evidence shows that there are rings normally associated with the placement of bottles of fluid in the base of the cabinet. While these sort of marks standing alone would be considered normal wear and tear of a tenancy of five years; there is also some other damage which the landlord has described as water damage caused by liquid of some sort seeping into the wood and causing it to swell. While I accept that there is some damage in the base of the cabinet; the landlord has the burden of proof in this matter to show that the tenant's actions or neglect

caused this damage and that it was not caused after the end of the tenancy or even prior to this tenancy. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find this is one person's word against that of the other and consequently, this section of the landlords' claim to recover costs to repair or replace the cabinet is dismissed.

With regard to the landlords' claim for the cost to replace the carpets; the landlords claims that the carpets had been damaged by some sort of chemical which was likely caused when the tenant cleaned the carpets. The landlord referred to the invoice from their carpet cleaner who has stated that the carpet has some yellowing throughout due to harsh chemicals used in past cleaning. The tenants argued that they were not given any special instructions as to what carpet cleaning solution to use and simply used a regular brand of carpet cleaner. If this carpet could not be cleaned by a normal method then the tenants should have been given special instructions on how to clean the carpet.

Under the Residential Tenancy Policy Guidelines it states that the carpets must be shampooed or steam cleaned after tenancies of more than a year but it does not state that carpets must be professionally cleaned. Further to this looking at the landlords photographic evidence showing some staining type marks on the carpet, if these were caused by the tenant's cleaning solution then I am of the opinion that all areas of the carpet would have the same colouring and not just areas of staining. I also have concerns as to whether or not this damage was caused after the tenants vacated the rental unit. While the landlord has provided some evidence from the painting company who have stated that their painters at no time spilled paint on the carpet or applied or spilled chemicals on the carpet the landlords were not present at that time to see if in fact this was the case. Consequently, I am not satisfied that the landlords have met the burden of proof in this matter and this section of their claim is dismissed.

The tenant has applied to recover double her security deposit; I refer the parties to s. 38(1) of the *Act* that says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenant's forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant

to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that this tenancy ended on July 31, 2016 and the landlord did receive the tenant's forwarding address in writing on August 17, 2016. As a result, the landlord had until September 01, 2016, to return the tenant's security deposit or file an application to keep it. I find the landlord filed an application to keep the security deposit on August 27, 2016. Therefore, I find that the tenant has not established a claim for the return of double the security deposit, but as the landlords' application to keep the security deposit for damages is dismissed then the tenant is entitled to recover the security deposit of **\$1,250.00** pursuant to section 67 of the *Act*.

As the tenant's application has merit I find the tenant is also entitled to recover the filing fee from the landlords of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,350.00**. The Order must be served on the landlords. Should the landlords 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 03, 2017

Residential Tenancy Branch