Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords – MND, MNSD, MNDC, FF

For the tenants – MNSD, MNDC, 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; 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 applied for a Monetary Order to recover double the 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 landlords 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 landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of the tenants' evidence. The tenants confirmed receipt of the landlords' evidence with the exception of the inspection reports. The landlords testified that these were sent separately to the tenants on November 05, 2016 by normal mail service; however, there is insufficient evidence to meet the burden of proof that these were received by the tenants. Therefore in accordance to the rules of procedure, Rule 3.5 and 3.17 I have not considered the landlords' move out inspection report but have considered the move in inspection reports as this was also provided by the tenants in their documentary 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 entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords permitted to keep all or part of the security and pet deposits?
- 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 double the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started originally on August 17, 2014 and was renewed each year for a fixed term tenancy until August 30, 2016 when it was renewed for a three month fixed term until November 30, 2016. The tenancy ended on October 31, 2016. Rent for this unit was $2,500.00 per month due on the 1st of each month. The tenants paid a security deposit of $1,475.00 and a pet damage deposit of $1,475.00 on August 17, 2014.

The landlords' application

The landlords testified that at the end of the tenancy the landlords and the tenant MC attended the move out inspection. MC left the inspection before it was completed. MC asked the landlord to speak to her husband as she did not want to sign the inspection report. DT advised the landlords that he would talk to a lawyer first or go to the city about the landlords' lower suite. The landlords testified that they completed the inspection report and sent a copy by normal mail service on November 05, 2016 to the tenants at a forwarding address provided by the tenants on November 01, 2016. This report was also sent by email and the landlords attempted to get together with the tenants to discuss the report and get the tenants to sign it before they took the matter to Dispute Resolution. It was the tenants who did not want to meet with the landlords. The landlord agreed this report was not sent to the tenants in their evidence package.

The landlord testified that there was water damage identified on the hardwood flooring in two areas. One area in the kitchen approximately two feet by two feet and an area in the dining room approximately two feet by three feet. The landlords agree the floor did have some dents and scratches at the start of the tenancy but no water damage was documented on the move in inspection report. The landlords testified that this is not normal wear and tear even though the flooring is nine years old. The landlords contacted BC Flooring and sent pictures of the damage. That company informed the landlords verbally that their minimum charge is $1,600.00 to sand and refinish; however, there is not a written quote for this work.

The landlords testified that the tenants caused some damage to the kitchen granite counter tops. During the inspection a chip was noticed and when the landlord asked the tenant about it she did not know how it happened. Later the landlord found more chips and the repairman found a total of 10 chips. The counters were five years old and the landlords seek to recover $283.50 for the costs incurred to repair the chips.

The landlord testified that the custom blinds were all left damaged at the end of the tenancy. The blinds were new in 2007 so were nine years old at the end of the tenancy. The landlord referred to their photographic evidence and the quote for a comparable blind replacement which includes installation. The blinds were left bent, the lines were chewed and they had water stains on them. The landlords seek to recover $2,405.30 for the costs to replace the blinds.

The landlords testified that two other blinds were purchased by the landlords. One was to replace another damaged blind and one was to replace a set of drapes that were missing from the forth bedroom. The landlord referred to her receipt showing four blinds purchased but testified that only seek half this cost for two blinds to an amount of $67.13.

The landlords testified that they carried out cleaning and repair work in the unit at the end of the tenancy. The unit was last repainted six months before the tenants moved in with their three children. At the end of the tenancy the walls were left with nicks, gashes, tape and glue on them and they had not been cleaned. There were also visible hand and foot prints. Further to this there was rail damage at the entrance were the rail was separated from the base and the bolts were loose and paint was cracked. There was further damage to other rails and one of the pillars looked like it had charcoal burns and the paint was bubbled. The landlords also had to

clean many areas of the unit as the tenants had not left it reasonably clean. The tenants did have cleaners in at the end of the tenancy but the general cleaning maintenance was not done during the tenancy and the landlords had to clean cobwebs, walls, the utility room, clean up cat dander, clean the entry way, light fixtures, the top oven and grill, window and door tracks and sliders and all the windows. The stairwell and bannister had to be cleaned, there was a black mark on the hardwood and the baseboards were dirty. The floor in the bathroom under the cabinet was dirty and had items left under there, the bathroom cabinets were dirty and the closets required cleaning. Due to the work put in by the landlords they seek to recover $800.00 for their time and labour.

The landlords testified that there was damage caused to a sink with what appeared to be heat discoloration. The landlords agreed that they have not provided photographic evidence of this damage; they agree the sink was five years old and they have not provided a quote for a replacement sink.

The landlords testified that the filtration system at the bar sink was turned off and was inoperable and wobbly. The tenants had never informed the landlord there was a problem with this water filter. The landlords replaced this and seek to recover $15.00. The landlords agree they did not have a receipt or photographic evidence showing the damage.

The landlords testified that a toilet seat was left damaged; the hinge was split where the seat holds to the bowl. The toilet was six years old. The landlord has provided a receipt for the replacement seat.

The landlords testified that there were missing items from the unit which had been left for the tenants use during the tenancy. The original central vacuum hose, the wand and three brushes were missing. These had been replaced with older items, the replacement hose was shorter, the brushes were old and does not attach to the wand and the wand is taped up. The landlord testified that they system is 11 years old and they seek to recover replacement costs for these attachments to an amount of $599.00. The landlords have not yet replaced these items but have provided a comparative costing from an advert for central vacs.

The drain tray for the sink was missing. This was five years old and although the quote for a replacement tray is $128.00 the landlords only seek to recover $100.00. The garburator plug is missing. The landlords seek to recover $10.00 although the receipt is for $15.48. The ultra max mop and bucket are missing. These were brought for the tenants use and were two years old. The landlords seek to recover $40.00.

The landlords testified that they had re-rented the unit to new tenants who were due to move into the unit on November 01, 2016. Due to the condition of the unit these tenants did not want to move their belongings in until the unit was clean and repaired. They did not therefore move in until November 07, 2016. Their rent is $2,800.00 per month and their rent was prorated to $2,400.00 for November. The landlords therefore seek to recover a loss of rental income from these tenants of $400.00.

The landlords seek an Order permitting them to keep the security and pet deposits to offset against their monetary claim. The landlords also seek to recover their filing fee of $100.00.

The tenants' rebuttal

The tenant disputed the landlords' claim. The tenants testified that the flooring was already damaged in many areas at the start of the tenancy and this is shown on the move in report. The tenants testified that they do not know what caused the water damage marks but the floors useful life is 10 years and this flooring was nine years old. The tenants also point out that the landlords have not provided a quote to show the actual cost to replace any floor damage.

With regard to the counter top the tenants testified that the landlords' photographic evidence shows only three small chips yet the invoice shows 10 chips were repaired. The tenants testified that in 2016 the landlord came to do a stove repair and he dropped a piece of the stove onto the counter. One of the chips shown is facing the stove and the tenants believe this was caused by the landlord when he did the stove repair. The counters were also five years old and the landlord must expect some deprecation.

With regard to the custom blinds; the tenants do not dispute that their cats caused some of this damage; yet the useful life of blinds is 10 years and that useful life has expired. The landlords now want the tenants to buy them new blinds at the end of the old blinds useful life.

With regard to the home depo blinds purchased. The tenants testified that one blind was purchased to replace a nine year old blind which was at the end of its useful life. The tenants agreed they did remove the drapes in the bedroom because they were old and worn out.

With regard to the landlords' labour costs for cleaning, walls and railings; the tenants testified that they had professional cleaners in at the end of the tenancy. Most of the landlords' claim is for the walls yet the useful life of interior paint is only four years so the landlords would have to paint the walls again and there were also nail holes in the walls at the start of the tenancy as shown on the move in inspection report. The tenants agreed they did not clean the patio, storage room or garage. The tenants testified that the rails were not in an ideal condition at the start of the tenancy and there is no indication as to how old these rails were. The tenants believe they left the rental unit in a reasonably clean condition at the end of the tenancy.

With regard to the damaged sink; the tenants testified that they have no idea what damage the landlords are referring to, there is no quote and no photograph showing any damage.

With regard to the filtration system; the tenants testified that they turned this system off at the start of the tenancy and never used it. They do not know what damage the landlords are referring to.

With regard to the toilet seat; the tenants testified that although they did not know what damage the landlords are referring to it is possible that with three children that the toilet seat was damaged during their tenancy.

With regard to the landlords' claim concerning missing items; the tenants disputed that they removed or replaced the accessories for the central vac system. This system was old and so were the tools provided. The tenants disputed that they removed the sink tray and garburator plug. They testified that they never saw this tray or plug and do not have them in their possession. The tenants testified that the mop and pail were worn out through normal wear and tear and so these were thrown out by the tenants.

With regard to the loss of rental income; the tenants testified that their digital evidence shows that the rental unit was reasonable clean and other than the outside areas this would not have prevented someone else moving into the unit.

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

The tenants' application

The tenants testified that the landlord has extinguished their right to file a claim to keep either of the deposits because the move out inspection report was not provided to the tenants within 15 days of the end of the tenancy. The tenants therefore seek to recover double the security and pet deposit to an amount of $5,900.00. The tenant MC testified that she did stay until the end of the move out inspection but did not agree with the things written on the report so did not want to sign it at that time. On November 01, 2016 the landlord sent the tenants an email saying the move out report was attached but there was no attachment. The landlord wanted to meet the tenants later. The tenants responded and informed the landlords that she had not attached the report to the email and that they would be happy to sign the report; however, the landlords never got back to the tenants and just filed their application for dispute resolution instead. Details of the tenants' forwarding address were also provided to the landlord. The tenants testified that they did not receive any mail from the landlord with the move out report sent on November 05, 2016 and find it strange that the landlord would send such an important document by normal mail when everything else was sent by registered mail.

The tenants seek to recover $500.00 from the landlord as they believe the lower suite was not a legal suite.

The landlords' rebuttal

The landlords testified that the move in report was sent to the tenants on November 05, 2016.

The landlords testified that they are not aware that the lower suite is not a legal suite. The tenants rented the whole house including that suite from the start of their tenancy in 2014 until August 2016 when the landlords moved into that suite until October, 2016.

Both parties declined to cross examine the other party.

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 landlords' application 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 of 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.

With this test in mind I have considered the landlords' claim for the following items:

Water damage to the floor; it is clear from the evidence provided that the flooring suffered from water marks in two areas, one in the kitchen and one in the dining room; however, the landlords seek to recover the amount of $1,600.00 to sand and refinish the flooring when the move in report shows that the flooring had some damage at the start of the tenancy. The landlord has not provided a quote to show the actual costs to sand and refinish these two areas with water damage and i find the landlords' claim of $1,600.00 to sand and refinish a floor that is nine years old to be extreme. The useful life of hard wood flooring is 10 years as shown in the Residential

Tenancy Policy Guidelines #40, taking this into account I find the useful life of the floor has almost expired and without a more informative written quote for any work to repair just these two areas; I find the landlords have not meet the above test for damage or loss claims and their claim is therefore dismissed.

With regard to the chips on the granite counter top; the counter top was five years old at the end of the tenancy. The Policy Guidelines show a useful life of 25 years. The move in inspection report shows the counter tops were in a good condition at the start of the tenancy. The tenants argued that at one time the landlord came to repair the stove and dropped a stove part on the counter top which was just as likely to have chipped it. If the tenants had found that the landlord had chipped the counter top they should have pointed this out to the landlord after they found any damage. I am satisfied from the evidence before me that the counter top was damaged during the tenancy and as the landlords have only repaired it and not replaced it in order to minimize the loss, then I find the tenants are responsible to pay for the cost of the repairs of **$283.50**.

With regard to the landlords' claim for replacement blinds; the blinds were nine years old, the useful life of blinds is considered to be 10 years. Due to the age of the blinds I must deduct 90 percent of the landlords' claim for deprecation of the blinds over their nine year life. Consequently, I find the landlords are entitled to recover the amount of **$240.53**.

With regard to the replacement costs for one other blind and a set of drapes, these were again nine years old and have a useful life of 10 years. The tenants agreed they did dispose of the drapes because they were old; however, tenants are not entitled to do so without the landlords' written permission. I also accept that the other blind was left damaged. Consequently, due to the age of the blinds and drapes I have deducted 90 percent for the deprecated values and find the landlords are entitled to recover the amount of **$6.71**.

With regards to the landlords' claim for $800.00 for their labour to clean and repair the unit; the tenants argued that the useful life of interior paint is four years and that there were nail holes in the walls at the start of the tenancy; the move in condition inspection report confirms this. Therefore, I find if the landlords did have to repair and repaint the walls that some deductions should be made for the deprecated value of the interior paint and for the holes in the walls at the start of the tenancy. Part of the landlords' claim is also for cleaning the walls and I accept that

the tenants should have ensured that any marks were cleaned off the walls at the end of their tenancy. I also find there is other cleaning required and that the unit was not left reasonable clean at the end of the tenancy. I also find from the evidence before me that the railings were damaged at the end of the tenancy and had to be repaired by the landlords. The railings show on the move in inspection report as being in a good condition at the start of the tenancy. Consequently, I have limited the landlords' claim to **$600.00**.

With regard to the landlords' claim for a replacement sink and the filtration system; there is insufficient evidence before me to show any damage to the sink or filtration system or any quote or invoice showing the cost to replace these items. These sections of the landlords' claim are therefore dismissed.

With regard to the landlords' claim for a replacement toilet seat; the move in inspection report does not document any damage to the toilet seat at the start of the tenancy. I must therefore conclude that this damage was caused during the tenancy. The toilet was six years old and I must assume the seat was also of this age. The useful life of a toilet is considered to be 20 years and while it might be argued that a toilet seat would not last as long as a toilet there is no documentation to support this. I have therefore deducted six years of deprecated value from the landlords' claim of $39.19 and find the landlords are entitled to recover the amount of **$27.43**.

With regard to the landlords' claim for missing items; the move in condition inspection report does not document that the central vac tools were in place at the start of the tenancy. The landlords have provided some evidence of the tools that were there at the end of the tenancy; however, as the tenants disputed that they replaced the tools during the tenancy then it is one person's word against that of the other that the tools in place at the end of the tenancy were not the same tools that were there at the start of the tenancy. As the landlords have the burden of proof in this matter I find without further corroborating evidence to show these were a different set of tools then the landlords have not met the burden of proof and their claim fails. Further to this I find there is insufficient evidence to show that the sink tray or the garburator plug was also in place at the start of the tenancy. Consequently the landlords' claim for these items and a new set of tools is dismissed.

With regard to the missing mop and bucket; these items had been left for the tenants use during the tenancy; there is no useful life recorded for items such as this; however from my own experience I find cleaning mops would most likely have to be replaced regularly if they are in constant use. I therefore find I must limit the landlords' claim to **$10.00** for the bucket as this was disposed of by the tenants.

With regard to the landlords' claim for a loss of rent for six days in November, 2016; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states; in part, that; even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

While I do not accept that all the damage claimed is the responsibility of the tenants I do find that there is sufficient evidence to show that the unit was not left clean and that a certain amount of damage had to be repaired before the new tenants could take possession of the rental unit. I understand the tenants did have cleaners in the unit at the end of the tenancy but from the evidence before me it is clear that they did not leave the rental unit reasonably clean. Consequently, I find in favor of the landlords' claim to recover a loss of rent for six days and award the landlords the amount claimed of **$400.00.**

I Order the landlords to keep part of the security and pet deposits pursuant to s. 38(4)(b) of the *Act*.

Chips repair on counter top	$283.50
Blind replacement	$240.53
Other blind and drape replacement	$6.71
Landlords' labour costs	$600.00
Toilet seat	$27.43
Missing bucket	$10.00
Loss of rent	$400.00
Amount due to the landlords	**$1,568.17**
Less security and pet deposits	(-$2,950.00)
Amount of pet deposit to be returned to the tenants	**$1,381.83**

With regard to the tenants' application to recover double the security and pet deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security and pet deposit to the tenants or to make a claim against it by applying for Dispute Resolution. If a landlords does not do either of these things and does not have the written consent of the tenants to keep all or part of the security and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlords must pay double the amount of the security and pet deposit to the tenants.

Based on the above and the evidence presented I find that this tenancy ended on October 31, 2016 and the landlords received the tenants' forwarding address in writing on November 01, 2016. As a result, the landlords had 15 days or until November 16, 2016, to return the tenants' security and pet deposit or file an application to keep it. I find the landlords did file an application to keep the security and pet deposits on November 02, 2016. Therefore, I find that the tenants have not established a claim for the return of double the security and pet deposit.

The tenants argued that the landlord extinguished their right to file a claim to keep the security and pet deposit as they did not send the tenants a copy of the move out inspection report within 15 days; the landlords argued that the tenants did not finish the inspection and therefore extinguished their right to recover the security deposit. I refer the parties to s. 36 of the Act which says:

36 *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

> *(a) the landlord complied with section 35 (2)* [2 opportunities for inspection]*, and*
> *(b) the tenant has not participated on either occasion.*
>
> *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 35 (2)* [2 opportunities for inspection]*,*

> *(b) having complied with section 35 (2), does not participate on either occasion, or*
> *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

I find the tenant did attend the move out inspection and there is insufficient evidence to show that it was not completed at the time the tenant MC left the unit. MC did not sign the inspection report at the time but I am satisfied that the tenants did email the landlords and ask for a copy to be sent so they could go over it and sign it. I have insufficient evidence from the landlord to show that a copy was sent to the tenants; however, s. 36(2) does stipulate that the landlord only extinguishes their right to file an application to keep the security or pet deposit for damages but does not prevent the landlord from filing an application to keep the security or pet deposit for any other monetary claim.

The landlords have applied for a loss of rental income as part of their claim and therefore I find they have a right to file this claim and did so within the 15 allowable days. Consequently, the tenants' application to have the security and pet deposit doubled under s. 38(6)(b) of the *Act* is dismissed. The tenants will receive a Monetary Order for the balance of the pet deposit as shown in the above chart.

The tenants have filed an application for $500.00 for issues to do with a secondary suite in the unit. There is no provision under the *Act* for any monetary award to be made in circumstances such as this. Whether or not the suite was a legal suite is not covered under the *Act* and therefore the tenants' application for compensation is dismissed.

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

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. The landlord is entitled to retain the amount of $**1,568.17** from the security and pet deposits pursuant to s. 38(4)(b) of the *Act* in full and final settlement of their monetary claim.

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 **$1,381.83 pursuant to s. of the Act**. 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: April 03, 2017

Residential Tenancy Branch