



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes (MNR), MND, (MNDC), MNSD, FF

Introduction

This matter dealt with an application by the Landlord for unpaid rent, for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts. The Tenants applied for the return of their security deposit, for compensation for expenses related to filing their application and to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Are there arrears of rent and if so, how much?
2. Is the Landlord entitled to compensation for damages to the rental unit and if so, how much?
3. Are the Tenants entitled to the return of their security deposit?

Background and Evidence

This fixed term tenancy started on May 3, 2009 and ended on July 31, 2009. Rent was \$1,600.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$800.00 at the beginning of the tenancy.

The Landlord claimed that the rent was based on there being only two occupants in the rental unit. Consequently, the Landlord said she had a verbal agreement with the Tenants that they would pay \$100.00 more each month when their children moved in with them. The Tenants admitted that there was a verbal agreement but claimed that the Landlord said she would only charge that amount if the utility amount increased but later agreed not to charge an additional amount (which the Landlord denied). A copy of the Parties' written tenancy agreement was provided as evidence at the hearing.

The Landlord admitted that she did not do a move in condition inspection report at the beginning of the tenancy but provided photographs of the rental unit she said she took some time prior to January 2009 as evidence of the condition of the rental unit at the beginning of the tenancy. The Landlord provided a handwritten note dated July 31, 2009 listing deficiencies she found at the end of the tenancy which was not signed by the Tenants but which included their forwarding address. The Landlord also provided photographs of the rental unit she claimed she took on August 1, 2009. The Tenants

dispute that those photographs accurately reflect the condition of the rental unit at the end of the tenancy.

The Landlord claimed that the rental unit was not cleaned properly at the end of the tenancy and that the Tenants did not steam clean the carpets. The Landlord also claimed that the Tenants were responsible for replacing a broken soap dish and (attached) shower tile, a broken glass table top and repairing a broken towel holder. The Tenants claimed that they cleaned the rental unit and vacuumed the carpets at the end of the tenancy. The Tenants admitted that they broke the glass table top but argued that the amount claimed by the Landlord to replace it was unreasonable. The Tenants argued that the soap dish and shower tile fell on its own one night and that the towel rack was never installed properly so they never used it.

The Tenants also sought compensation of \$200.00 for their time to make their application and to serve it on the Landlord. The Tenants claimed that they did not authorize the Landlord to keep their security deposit and that she has failed or refused to return it to them.

Analysis

Tenants' Claim:

Section 24(2) and section 36(2) of the Act state that a Landlord's right to claim against a security deposit for damages to a rental unit is extinguished if the Landlord does not complete a move in or a move out condition inspection report. The Landlord admitted that she did not do a move in condition inspection report and argued that her handwritten document was a move out inspection report. However, section 20 of the Regulations to the Act sets out the information that must be contained in a condition inspection report. I find that the Landlord's handwritten document does not comply with s. 20 of the Regulations to the Act because it does not contain a statement of the state of repair and general condition of each room in the rental unit (as well as other omitted information). As a result, I find that the Landlord did not have a right to keep the security deposit because her right to make a claim against it was extinguished.

Consequently, RTB Policy Guideline #17 (Security Deposit and Set Off) states at p. 2 that even if a Landlord applies within the time limits under the Act, an arbitrator will order the return of double the security deposit if the Landlord's right to make a claim against the deposit was extinguished under the Act. That guideline also states that an arbitrator must order the return of double the security deposit even if the Tenants do not apply for it. As the Landlord's right to keep the security deposit was extinguished and as she did not return the Tenants' security deposit within 15 days of receiving the



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Tenants' forwarding address and did not have their written authorization to keep it, I find that the Landlord must (pursuant to s. 38(6) of the Act) return double the amount of the Tenants' security deposit to them or **\$1,600.00**.

I find that there is no evidence in support of the Tenants' claim for compensation for their time to file their application or for the cost of their registered mail expenses and as a result, that part of their claim is dismissed. However, I find that the Tenants are entitled to recover their **\$50.00** filing fee paid for this proceeding.

Landlord's Claim:

The purpose of having a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine if repairs are required or alternatively, what damages existed prior to the tenancy. Similarly, a move out condition inspection report is reliable evidence of whether the rental unit was damaged by the Tenants during the tenancy or needed cleaning at the end of the tenancy.

I find that the Landlord's photographs of the rental unit more than 5 months prior to the beginning of the tenancy are not helpful because they do not address what the condition of the rental unit was on May 3, 2009. I also find that the Landlord's photographs she said she took on August 1, 2009 are unreliable because they were not taken with the Tenants present and the Tenants claim that they do not accurately represent the condition of the rental unit when they vacated. Consequently, I find that there is insufficient evidence that the rental unit was not reasonably clean at the end of the tenancy and the Landlord's claim for general cleaning is dismissed for that reason.

RTB Policy Guideline #1 (Responsibility for Residential Premises) says that a Tenant will usually not be responsible for cleaning carpets unless they reside in the rental unit for a year, or have smoked, or had pets or otherwise soiled the carpets. Consequently, in the absence of a term in the tenancy agreement requiring them to clean the carpets at the end of a short term tenancy or any evidence that the carpets were soiled, I find that there are no grounds for the Landlord's claim for carpet cleaning expenses and it is dismissed.

The Tenants admitted that they broke a glass table top but disputed the amount claimed by the Landlord. However, in the absence of any evidence from the Tenants as to what would be a reasonable cost to replace the glass table top, I accept the amount claimed by the Landlord and award her **\$150.00**.

The Tenants denied that they were responsible for breaking a soap holder and shower tile and argued that the tile fell off one day due to the weight of the soap holder. The Tenants also argued that they did not use the towel holder because it was not installed properly. The Landlord argued that the soap holder would not have fallen off under its own weight and it is more likely that the soap holder came off when weight was put on it. The Landlord also argued that the Tenants did not say anything about problems with the towel holder during the tenancy.

The Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenants damaged the soap holder and towel holder due to an act or neglect of the Tenants as opposed to reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any reliable corroborating evidence from the Landlord, I find that the Landlord has not provided sufficient evidence to show that the Tenants are responsible for these damages and this part of her claim is dismissed.

The Landlord sought \$200.00 representing an additional \$100.00 rent per month that she claimed the Tenants agreed to pay for having 2 extra occupants for a two month period. The tenancy agreement does not say anything about an additional charge for additional occupants, however, the Tenants admitted that there was (at first) a verbal agreement that they would pay this amount to cover the anticipated increased utility costs. The Tenants claimed, however that the Landlord later waived this requirement. In the absence of a term in the tenancy agreement requiring the payment of an additional amount for additional occupants or any other corroborating evidence, I find that there is insufficient evidence that the Tenants were required to pay additional rent and that part of the Landlord's claim is dismissed.

As the Landlord has been successful on only one out of 6 claims she made in this matter, I find that it is not an appropriate case to award her reimbursement of her filing fee and that part of her claim is dismissed.

Although the Landlord's right to make a claim against the security deposit is extinguished, I find that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to keep **\$150.00** from the Tenants' security deposit to compensate her. I order the Landlord to return the balance of the Tenants' security deposit and filing fee to them as follows:



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Double security deposit:	(\$1,600.00)
Filing fee:	<u>(\$50.00)</u>
Subtotal:	(\$1,650.00)
Less: Landlord's award:	<u>\$150.00</u>
Balance Owing:	(\$1,500.00)

Conclusion

A monetary order in the amount of **\$1,500.00** has been issued to the Tenants and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: December 11, 2009.

Dispute Resolution Officer