



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for compensation for damages to the rental unit, to recover the filing fee for this proceeding and to keep the Tenant's security deposit and pet damage deposit in payment of those amounts.

Issues(s) to be Decided

1. Is the Landlord entitled to compensation for alleged damages and if so, how much?
2. Is the Landlord entitled to keep the Tenant's security deposit and pet damage deposit?

Background and Evidence

This tenancy started on October 1, 2007 and ended on August 30, 2009 when the Tenant moved out. Rent was \$3,300.00 per month. The Tenant paid a security deposit of \$1,650.00 and a pet damage deposit of \$1,650.00 at the beginning of the tenancy.

The Parties completed a move in and a move out condition inspection report. The Landlord claimed that the Tenant was responsible for the following damages which occurred during the tenancy:

1. Drapes: The Landlord claimed that she gave the Tenant permission to alter a drape panel but the Tenant cut it off at floor length and did not hem it. The Landlord further claimed that the drape panel was now useless because it did not have enough length to hem it properly. The Tenant denied that the drape panel could not be hemmed and the panel still be used.
2. Missing key: The Tenant admitted that he returned only one of two deadbolt keys.
3. Damage to a refrigerator door: The Landlord claimed that Tenant scratched a stainless steel door and caused further damage to the handle. The Tenant admitted that he was responsible for the scratches but claimed that the

- handle was broken at the beginning of the tenancy and not repaired properly by the Landlord.
4. Chip in enamel bathtub: The Landlord claimed that the Tenant put a ¼ inch diameter chip in the enamel tub and that it would cost an estimated \$100.00 to repair it. The Tenant claimed that the bathtub was chipped at the beginning of the tenancy and that he took a picture of it, however he did not provide a copy of the photograph as evidence at the hearing.
 5. Damaged moulding: The Landlord claimed that panelling and moulding in a hallway was scratched, gouged and marked by the Tenant. The Tenant admitted that he was responsible for the marks on the panelling but claimed that the damage to the panelling and moulding existed at the beginning of the tenancy. The Tenant also claimed that the Landlord only mentioned the marks to him (and not the scratches and gouges) during the move out inspection.
 6. Missing manuals: The Tenant admitted that he received manuals and a breaker guide at the beginning of the tenancy but could not locate them at the end of the tenancy. The Tenant argued that the manuals could be easily obtained online.
 7. Re-seeding the yard: The Landlord claimed that the grass in the yard of the rental property had died and that the Tenant failed to re-seed it at the end of the tenancy. The Tenant said offered to top-dress and re-seed the yard but the Landlord told him not to because she was doing maintenance to the exterior of the property (such as power washing) and felt it would not be a good time.
 8. Broken icemaker bracket: The Landlord said the icemaker in the freezer was not sitting properly because a bracket had broken. The Landlord claimed that the Tenant attempted to fix it but was not successful. The Tenant denied using the icemaker during the tenancy and also denied that he tried to repair it. The Tenant argued that the previous Tenant had probably made the repair which would not have been obvious during the move in inspection because it was covered by a panel.
 9. Replaced light fixture panels: The Landlord claimed that the Tenant replaced 5 panels in light fixture but that they did not match the original panels in size or appearance and as a result, the value of the light fixture as a whole was diminished. The Tenant argued that none of the panels fit the light fixture

- properly and fell out when blown by the wind. The Tenant claimed that he had the panels made at a glass company recommended by the Landlord.
10. Butcher's block: The Landlord claimed that the Tenant was responsible for black mould stains on a butcher's block where a water faucet was located. The Landlord admitted that there was a pre-existing mould stain but argued that it had been repaired and that the Tenant's failure to ensure water did not pool in that area caused the stain to grow. The Tenant argued that the stain was the unavoidable result of the mould growing.
11. Carpet cleaning/deodorizing: The Landlord claimed that although the Tenant had the carpets cleaned at the end of the tenancy, they were not deodorized and as a result, a lingering pet odour was present in the rental unit. The Landlord claimed that the smell discouraged potential renters. The Tenant argued that the carpet cleaner he hired guaranteed their work and that the Landlords could have called them to re-clean the carpets. The Tenant also argued that there was a strong pet odour smell at the beginning due to the previous tenant's dog(s) soiling the carpets, underlay and wood floor.

Analysis

Section 32 of the Act says that a Tenant is responsible for repairing damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Section 21 of the Regulations to the Act says "a condition inspection report completed in accordance with the Regulations 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."

The Tenant admitted that he was responsible for replacing a deadbolt key and scratching a refrigerator door. Even if the refrigerator door handle had pre-existing damage, I find that the amount of \$20.00 reasonable just to repair the scratches and as a result, I award the Landlord **\$24.00** for those two items.

Drape Panel: I find that there is insufficient evidence that the drape panel was unsalvageable because it was cut off at floor length. However I find that the Landlord is entitled to compensation for having to hem the panel that was cut off by the Tenant and I award her **\$10.00** for that part of her claim.

Chip in the bathtub enamel: The move in condition inspection report does not state anything about a chip in the bathtub at the beginning of the tenancy. In the absence of any evidence from the Tenant to corroborate his argument that the tub was already damaged, I find on a balance of probabilities that it was damaged during the tenancy. I also find that while scratches would reasonably be expected, a chip in the enamel exceeds reasonable wear and tear. Consequently, I find that the Landlord is entitled to recover **\$100.00** for this repair expense.

Damaged moulding: I find that there is insufficient evidence that the Tenant caused new gouges or nicks in the paneling and moulding in the hallway. Pre-existing damages to this area are indicated on the move in and move out condition inspection reports and nothing is indicated to differentiate them or to indicate that the gouges or nicks on move out were new or additional. The Tenant admitted that marks were caused by him and as a result, I award the Landlord **\$10.00** to repair or remove those.

Missing manuals: The Tenant did not dispute that he was responsible for missing appliance manuals but argued that they could be replaced at little to no cost to the Landlord. I find however, that the Tenant had an opportunity to mitigate his damages by providing online copies to the Landlord either at the end of the tenancy or prior to this hearing. I further find that the amount of **\$15.00** is reasonable having regard to the cost of paper and ink materials and as a result, I award the Landlord that amount.

Grass re-seeding: RTB Policy Guideline #1 at p. 7 says that if a tenant has exclusive use of a yard, they are responsible for routine yard maintenance. Although the Tenant argued that the Landlord told him not to re-seed toward the end of the tenancy because she was doing other maintenance, I cannot conclude that the Landlord intended to relieve the Tenant of that responsibility. In particular, the Tenant did not have to wait until the end of the tenancy to repair the lawn. Furthermore, I find it more likely that the wear and tear from the Tenant's dog rather than a lack of sunlight was responsible for the damaged grass. Consequently, I find that the Landlord is entitled to recover **\$32.00** for grass seed.

Ice-maker bracket: The Tenant claimed that he did not try to repair the ice-maker bracket and argued that it could have been broken at during the move in inspection but would not have been noticed at that time because there was a cover over it. In the circumstances, I am not convinced that the ice maker bracket was damaged by an act or neglect of the Tenant and find instead that it was dislodged due to wear and tear and that it was therefore a part of the Landlord's duty to repair and maintain under s. 32 of the Act. As a result, this part of the Landlord's claim is dismissed.

Light fixture panels: The Tenant did not deny damaging 5 panels but claimed that he did what he could based on the Landlord's advice to repair the panels. The Tenant also



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

argued that 2 of the panels had previously been replaced and the 5 he had made matched those. The Landlord claimed that the repair was inadequate insofar as the panels did not exactly match the originals. The Landlord also argued that the panels could have been more properly matched had the Tenant used the original panels from which to make copies rather than one that had already been replaced. The Landlord claimed that the original panels could no longer be purchased and as a result she sought compensation for the diminished value of the light fixture based on what it would have cost to replace the original panels less what the Tenant paid. However, the Landlord provided no evidence to corroborate her argument that the light fixture has a diminished value as a result of the re-made panels and as a result, that part of her claim is dismissed.

Butcher's block: The Landlord admitted that there was a pre-existing stain around the faucet from black mould but argued that the Tenant was responsible for the stain growing. In particular, the Landlord claimed that the Tenant allowed water to pool in that area. I find that there was pre-existing mould staining and that the Landlord has provided insufficient evidence that the mould continued to grow and spread due to some act or neglect of the Tenant. In particular, I find that it is likely the mould would not have been an issue at all during the tenancy, had there not already been mould present. Consequently, this part of the Landlord's claim is dismissed.

Carpet Cleaning/Deodorizing: I find that there is no evidence that the carpets were deodorized at the end of the tenancy. In particular, there is nothing to that effect noted on the Tenant's carpet cleaning invoice and I accept the Landlord's evidence that the carpet cleaner in question advised her that it was not done. I find that it was not unreasonable for the Landlord to require the Tenant to do this given that he had a dog. However, the Landlord's carpet cleaning invoice states that carpet cleaning **and** deodorizing was done despite the fact that the Tenant had already had the carpets cleaned. Consequently, I find that part of the amount claimed for deodorizing by the Landlord was unnecessary and I award her one-half of this expense or **\$145.69**.

I also find that the Landlord is entitled to recover the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) of the Act to keep \$386.69 from the Tenant's security deposit and to return the balance of it and the pet damage deposit to the Tenant as follows:

Security deposit:	(\$1,650.00)
Interest:	(\$31.08)
Pet deposit:	(\$1,650.00)
Interest:	<u>(\$31.08)</u>
Subtotal:	(\$3,362.16)



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

Less: Drape repair:	\$10.00
Key:	\$4.00
Refrigerator scratches:	\$20.00
Bathtub repair:	\$100.00
Marks on hall wall:	\$10.00
Appliance manuals:	\$15.00
Reseeding yard:	\$32.00
Carpet deodorizing:	\$145.69
Filing fee:	<u>\$50.00</u>
Subtotal:	\$386.69

Balance due to Tenant: \$2,975.47

As a final note, the Tenant claimed that the Landlord required him to give her one month's rent in advance each year upon renewing the tenancy agreement (in addition to the pet deposit and security deposit). Section 19 of the Act prohibits a Landlord from accepting or requiring more than one pet deposit and one security deposit that exceeds one half of one month's rent. This means that the Landlord may not require a Tenant to pay rent in advance as a condition of the tenancy agreement. If a Landlord does so, a Tenant may apply for dispute resolution to recover the overpayment.

Conclusion

A monetary order in the amount of **\$2,975.47** has been issue to the Tenant 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: January 06, 2010.

Dispute Resolution Officer