# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Are the Landlords entitled to compensation and if so, how much?
2. Are the Landlords entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on October 23, 2008 and ended on February 2, 2010 when the Tenants moved out. Rent was $1,510.00 per month. The Tenants paid a security deposit of $725.00 at the beginning of the tenancy.

The Landlords did not complete a condition inspection report at the beginning of the tenancy. The Landlords said they live in another community so they left a message for the Tenants on February 2, 2010 that they would be at the rental unit from February 6 – 10th and asked the Tenants to contact them to set up a time to do an inspection. The Landlords said the Tenants did not return their message until February 10, 2010, after they had left and completed a move out inspection report. The Landlords said the Tenants did not give them a forwarding address in writing until June 21, 2010 however the Landlords admitted that they knew as of February 7, 2010 that the Tenants had moved to the adjoining duplex.

The Landlords said the rental unit was new when they moved into it and they lived in it for 17 months. The Landlords said that when the Tenants moved in there would have been only a few scuffs on the walls and a hole in one bedroom door. The Landlords also claimed that the carpets had been professionally cleaned and had no stains. The Tenants claimed that there were obvious patch marks on the walls that had been painted over at the beginning of the tenancy and that a washing machine did not work properly.

The Landlords claim that at the end of the tenancy, some of the walls and floors had drinks spilled on them and the carpets in the stairwell, upstairs hallway and bedrooms were stained or soiled. The Landlords also claimed that the kitchen cupboards and counters were not cleaned nor was one of the bathrooms.

The Landlords said there were dents, scratches and black marks in the living room and dining room area that were not reasonable wear and tear and had to be repaired and repainted. The Landlords also said that the venetian blinds in the living room had broken slats and a screen had been broken. The Landlords admitted that the Tenants reported this damage (to the screen) during the tenancy and claimed that they believed someone had tried to break in. The Landlords further claimed that there were small but noticeable gouges in the laminate flooring in the entrance way and living room and holes that had been poorly patched in the entrance way and one bathroom. The Landlords claimed that the steel front door had a number of dents in it and the washer and dryer were damaged and (the dryer) appeared to have been tampered with. The Landlords also claimed that the Tenants left an old recliner and engine outside, garbage in the crawl space, drilled a hole in the siding to mount a satellite dish without their consent and left dog feces in the yard.

The Tenant said that they cleaned the rental unit thoroughly at the end of the tenancy and steam cleaned the carpets. The Tenants admitted that they left a recliner, engine and toaster oven but claimed that the Landlords knew they were living next door and could have asked them to retrieve those items. The Tenants denied that they left any other items in the rental property. The Tenants said that prior to moving in, they advised one of the Landlords that they wanted to mount a satellite dish and assumed he knew it would have to be attached to the side of the rental unit. The Tenants also said that they had no idea how the front door got dented and were unaware of any dents in the laminate flooring. The Tenants denied having a dog and suggested that any dog feces in the yard would have been from the neighbour's dog.

The Tenants claimed that they did a move out inspection with a friend of the Landlords' on February 2, 2010 and that she was satisfied with the condition of the rental unit that day. The Tenants argued that the real reason the Landlords were unhappy with them was because they moved out of the rental unit and into the adjoining duplex.

## Analysis

Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as conclusive evidence of whether the Tenant is

responsible for damages to the rental unit during the tenancy or if he has left a rental unit unclean at the end of the tenancy. Section 17 of the Regulations to the Act says that a Landlord must offer a Tenant two opportunities to schedule a condition inspection with the second opportunity given by way of serving a document on the Tenant called a Final Notice to Schedule a Condition Inspection. If a Tenant still fails to attend the condition inspection at the date and time set out on the Notice, then the Landlord may complete the Condition Inspection Report in the Tenant's absence.

In this matter, the Landlords have the burden of proof and must show that the Tenants caused damages to the rental unit through some act or neglect as opposed to reasonable wear and tear. This means that if the Landlord's evidence is contradicted by the Tenants, the Landlords will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlords did not complete a move in Condition Inspection Report and there is little other evidence as to the condition of the rental unit at the beginning of the tenancy. The Landlords provided a copy of a move out Condition Inspection Report that they completed on February 6, 2010 in the Tenants' absence, however, I find that they did not comply with the requirements of s. 17 of the Regulations to the Act because they could have served the Tenants with a Final Notice to Schedule a Condition Inspection but did not do so. As the Tenants dispute a number of things set out in the move out Report, and given that there is little corroborating evidence to support the Report, and given further that an agent of the Landlords accepted the condition of the rental unit at the end of the tenancy, I find that the Landlords' Report dated February 6, 2010 is unreliable and of little assistance.

In particular, I find that there is insufficient evidence to conclude that the rental unit was not reasonably clean at the end of the tenancy. I also find that there is insufficient evidence to conclude that many of the damages alleged by the Landlords occurred during the tenancy or alternatively, were caused by an act or neglect of the Tenants as opposed to reasonable wear and tear. Although I find that there is sufficient evidence that the Tenants were responsible for two holes in the walls, I find that there is insufficient evidence that they failed to adequately repair those holes.

I also find that there is insufficient evidence that the Tenants were responsible for damaging a dryer by taking it apart and attempting to repair it. Given the contradictory evidence of the Parties, I also find that there is insufficient evidence that the Tenants installed a satellite dish without the Landlords' knowledge and consent. Although, RTB Policy Guideline #1 at p. 8 says that where a Tenant removes a fixture at the end of the tenancy (whether consented to by the Landlord or not), he is responsible for repairing any damage caused to the premises, the Landlords provided no evidence as to whether they had to incur any expenses to repair any damage.

The Tenants admitted to leaving behind a chair and engine (and toaster oven) but argued that they intended to remove them but in any event the Landlords knew they were living next door and could have asked them to retrieve them.

Section 7(2) of the Act says that where a Party suffers damage or loss as the result of another Parties breach of the Act or tenancy agreement, the first Party must take reasonable steps to minimize their losses. This means that although the Tenants were responsible for removing their belongings from the rental property at the end of the tenancy, the Landlords had a duty to mitigate any financial losses they might incur by taking reasonable steps to deal with those articles. The Landlords' receipt for disposal expenses is dated February 10, 2010. The Landlords admitted that they knew as of February 7, 2010 that the Tenants were living next door. Consequently, I find that the Landlords would likely have avoided this cost had they walked next door and asked the Tenants to remove their belongings.

For all of the above reasons, I find that there is insufficient evidence to support the Landlords' claim for compensation and it is dismissed without leave to reapply. As a result, I order the Landlords pursuant to s. 38(4) to return the Tenants' security deposit of $725.00 together with accrued interest of $1.81 forthwith.

Conclusion

The Landlords' application is dismissed without leave to reapply. A Monetary Order in the amount of **$726.81** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, 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: November 08, 2010.

Dispute Resolution Officer