# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

**Dispute Codes** MNDC, MNSD, FF
MNSD

## Introduction

This matter dealt with an application by the Landlord to recover cleaning and repair expenses and the filing fee for this proceeding as well as to keep the Tenant's security deposit in partial payment of those amounts. The Tenant applied for the return of his security deposit.

The Landlord filed her application on September 12, 2011, received hearing packages on September 13, 2011 and served the Tenant in person with it on September 16, 2011. The Tenant then served the Landlord with an evidence package responding to her claim on September 18, 2011. The Landlord initially objected to the Tenant's late evidence and sought to have it excluded at the hearing however given that it was filed late only because the Landlord filed and served her application late, the Landlord withdrew her objection.

## Issue(s) to be Decided

1. Is the Landlord entitled to compensation for cleaning and repair expenses and if so, how much?
2. Is the Tenant entitled to the return of his security deposit?

## Background and Evidence

This month-to-month tenancy started on August 1, 2010 and ended on August 22, 2011 when the Tenant moved out. Rent was $1,400.00 per month payable in advance on the 1st day of each month. The Tenant paid a security deposit of $700.00 at the beginning of the tenancy. The Landlord did not complete a move in or a move out condition inspection report.

The Landlord's Claim:

The Landlord said that at the beginning of the tenancy, she did an inspection with the Tenant and there were no condition issues. The Landlord said however at the end of the tenancy, there was a broken window in the dining room and the living room window

curtains were missing. The Tenant claimed that the window broke because it was "defective" in that there was no latch to hold it in place and as a result, when he pushed it open, it slid back down and broke. The Tenant also claimed that he removed the curtains which appeared to him to be at least 20 years old and stored them in the basement. The Landlord denied that this was the case and said that it appeared the window had broken because a screen supporting it had been removed by the Tenant. The Landlord also claimed that the drapes were only 6 years old, of good quality and in good condition at the beginning of the tenancy and she had to replace them with some of an inferior quality. The Landlord said the curtains were not in the basement and the Tenant told her during the move out inspection that he did not know where they were.

The Landlord said there were no damages to the walls in the rental unit at the beginning of the tenancy but at the end of the tenancy 3 living room walls were damaged. In particular, the Landlord claimed that 2 of the walls had "C-shaped" cracks that were not near any seams and appeared to have been caused by an impact such as a shoulder. The Landlord said this was also the opinion of a contractor who repaired the walls. The Tenant denied that the cracks in the walls were C-shaped and claimed instead that they were straight lines consistent with structural damage. The Tenant also claimed that he was unaware of the cracks until the Landlord pointed them out during the move out inspection. The Tenant admitted that he and his roommates were responsible for the damage (3 holes) to a 3rd wall in the living room.

The Landlord also claimed that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy and she had to spend approximately 8 hours cleaning such things as the interior windows, inside cupboards and kitchen appliances, dusting and vacuuming. The Landlord said the Tenant admitted to her at during the move out inspection that "it was not as clean as it could have been" because his roommates moved out and left all of the cleaning to him and he ran out of time. The Tenant claimed that he and a number of friends cleaned the rental unit at the end of the tenancy, that he had the carpets cleaned and that it was as clean as it was at the beginning of the tenancy.

The Landlord further claimed that the Tenant did not clean up the exterior of the rental unit but left yard waste and debris in the yard that she raked up once the snow melted. The Landlord claimed that it took her 8 hours to rake up the debris from the yard and to clean the exterior windows. The Landlord said the Tenant also left excess garbage in the garbage container and recyclables which she had to take to the dump with the yard waste. The Tenant initially argued that he was not responsible for raking up the yard debris because it was covered with snow at the end of the tenancy. The Tenant then argued that neither he nor his roommates were responsible for leaving garbage in the yard because they did not use it during the tenancy, but rather only used the patio. The Tenant also claimed that he removed all excess garbage from the rental unit and took it to the dump at the end of the tenancy.

The Tenant's Claim:

The Parties agree that the Tenant did not give the Landlord his forwarding address in writing at the end of the tenancy. The Parties also agree that the Tenant did not give the Landlord written authorization to keep his security deposit and that none of the security deposit has been returned to the Tenant.

## Analysis

The Landlord's Claim:

Section 37 of the Act says that at the end of a tenancy, a Tenant must leave a rental unit reasonably clean and undamaged except 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."

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant was responsible for damages to the rental unit and that they were not the result of reasonable wear and tear. The Landlord also has the burden of proof to show that the rental property was not left reasonably clean at the end of the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

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 some objective 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. In the absence of a condition inspection report, other evidence (eg. photographs) may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The Landlord did not complete a move in condition inspection report or provide any other corroborating evidence as to the condition of the rental unit at the beginning of the tenancy. However, the Tenant did not dispute that a window broke during the tenancy and that he removed curtains and did not replace them at the end of the tenancy. The Tenant argued, however, that he was not responsible for these items because the window was defective and the curtains old. The Tenant also argued that he left the curtains in the basement of the rental unit so he could not account for why the Landlord could not find them.

I find on a balance of probabilities that the window in the living room broke as a result of an act or neglect of the Tenant as opposed to a defect. The Tenant provided no evidence that the window should have had a latch and the Landlord denied that this was the issue in any event. Consequently, I find that the Landlord is entitled to recover **$52.40** for the broken window.

I also find that the Tenant is responsible for part of the cost of replacing the living room curtains. I do not give any weight to the Tenant's argument that he was not responsible for the curtains because the Landlord could not find them during the move out inspection. The Tenant also argued that he was not responsible for replacing the curtains because he believed they were 20 years old however he provided no reliable evidence in support of that assertion. Nevertheless, I find that the curtains would have been at least 6 years old. RTB Policy Guideline #37 at p. 37 states that curtains have a useful lifetime of 10 years and as a result, I find that the Landlord is entitled to recover 40% of the cost of the replacement curtains or **$80.63**.

The Tenant admitted that he was responsible for the cost of repairing one of the damaged living room walls but argued that cracks in the other 2 walls were the result of structural defects or a shifting foundation which he claimed was normal wear and tear in a 50 year old house. The Tenant provided faxed copies of photographs of the cracks however they were of no assistance because they were completely black. The Landlord provided a letter from her contractor who claimed that in his opinion the cracks were not "structural but rather damage." This person did not attend the hearing to give evidence or to be questioned on his statement and as a result, I find that this evidence is hearsay and unreliable. Consequently, I give the contractor's written statement little weight.

Given the contradictory evidence of the parties on the issue of the wall damage and in the absence of any reliable, corroborating evidence from the Landlord (such as a move out condition inspection report or photographs) to resolve the contradiction, I find that there is insufficient evidence to conclude that the cracks to two of the living room walls were caused by an act or neglect of the Tenant. Consequently, I find that the Landlord is only entitled to recover expenses for repairing one wall. The Tenant provided a quote from a contractor who claimed that he viewed a photograph of the wall containing 3 holes and estimated that it would cost **$280.00** (including HST) to repair it. I find that this amount is reasonable and I award the Landlord that amount.

The Landlord also claimed that she spent a total of 8 hours cleaning the inside of the rental unit because the Tenant did not leave it reasonably clean at the end of the tenancy however the Tenant denied this. Given the contradictory evidence of the Parties on this issue and in the absence of any additional, corroborating evidence from the Landlord (such as a move out condition inspection report or photographs), I find that there is insufficient evidence to conclude that the rental unit was not reasonably clean at the end of the tenancy and this part of the Landlord's application is dismissed without leave to reapply.

The Landlord further claimed that she spent a total of 8 hours cleaning the exterior windows of the rental unit and the yard. The Tenant denied having used the yard during the tenancy and argued that any debris would have been there at the beginning of the tenancy. The Tenant also argued that all garbage was removed from the rental unit at the end of the tenancy. RTB Policy Guideline #1 at p. 3 states that a Landlord is responsible for cleaning exterior windows consequently, I find that the Landlord is not entitled to be compensated for that. The Parties gave contradictory evidence of the with respect to the balance of the Landlord's claim for raking up debris from the yard and taking it and excess garbage and recycling to the dump. In the absence of any additional or corroborating evidence from the Landlord to resolve this contradiction, I also find that there is insufficient evidence to support this part of the Landlord's claim and it is dismissed without leave to reapply.

The Landlord also sought to be compensated for her time to prepare for and attend the dispute resolution hearing. However the Act does provide for the payment of a Party's costs to reimburse them for their time or the time of an agent to act on their behalf in dispute resolution proceedings and as a result, this part of the Landlord's claim is dismissed without leave to reapply. As the Landlord has only been partially successful on her claim, I find that she is entitled to recover one-half of the filing fee she paid for this proceeding or $25.00. Consequently, I find that the Landlord has made out a total monetary claim for $438.03.

Sections 24(2) and 36(2) of the Act say that if a Landlord does not complete a move in or a move out condition inspection report in accordance with the Regulations, the Landlord's right to make a claim against a security deposit for damages to the rental unit is extinguished. In failing to complete a move in or a move out condition inspection report, I find that the Landlord's right to make a claim against the Tenant's security deposit for damages to the rental unit was extinguished and this part of her claim is dismissed without leave to reapply.

The Tenant's Claim:

Section 38(1) of the Act says (in part) that a Landlord does not have to return a Tenant's security deposit until she receives the Tenant's forwarding address in writing. The Tenant admitted that he did not give the Landlord a forwarding address in writing and as a result, I find that he is also not entitled under the Act to make a claim for the return of his security deposit and his application is dismissed without leave to reapply.

Conclusion

Although the Parties' respective applications to keep the security deposit were dismissed, 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 monetary awards 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 $438.03 from the Tenants' security deposit in full satisfaction of her monetary claim. I Order the Landlord to return the balance of the security deposit in the amount of $261.97 to the Tenant forthwith.***

A Monetary Order in the amount of $261.97 has been issued 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: September 21, 2011.

Residential Tenancy Branch