



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This was a hearing with respect to applications by the tenants and by the landlords. The applications were heard together by conference call. The named landlord and the tenants called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to the return of their security deposit, including double the amount?

Are the landlords entitled to a monetary award as compensation for damage and repairs to the rental unit and if so, in what amount?

Are the landlords entitled to retain the security deposit?

Background and Evidence

The rental unit is a strata title apartment in Port Moody. The tenancy began on August 1, 2009 for a one year fixed term and thereafter month to month. The monthly rent was \$1,500.00, payable on the first of each month. The tenants paid a \$750.00 security deposit and a \$750.00 pet deposit at the commencement of the tenancy.

The tenants gave notice to the landlord at the end of March, 2012 that they intended to move out at the end of April. The tenants took part in a move-out inspection on April 29th and gave the landlord their forwarding address in writing during the inspection.

The landlord claimed that the tenants did not leave the rental unit in acceptable condition at the end of the tenancy. In particular the landlord said that the tenants caused excessive damage to the carpets in the rental unit. He said they were burned near the fire place and were soiled and stained by the tenants' pets and children.

The tenants took the position that they left the rental unit in acceptable condition and any stains or damage to the carpets constituted normal wear and tear. The tenants said that some burns to the carpet near the fireplace were due to a faulty fireplace guard supplied by the landlord. The tenants proposed to allow the landlord to keep \$350.00 from the security deposit as compensation and to return to the rental unit to shampoo clean the carpets.

The landlord replied by e-mail dated May 8th. He said it was too late to shampoo the carpets as they had already been removed. He proposed to charge the tenants 50% of the carpet replacement cost and return the sum of \$340.00 from the tenants' \$1,500.00 deposit. The tenants did not accept the landlord's proposal, but the landlord sent the tenants a cheque in the amount of \$340.00 together with a letter that stipulated that the cheque was in full payment of the landlord's obligations. Neither party provided me with a copy of the letter. The tenants did not cash the landlord's cheque because they did not agree with his stipulations.

The landlord filed his application on February 4, 2013. He claimed payment of the sum of \$4,689.31 made up of the following:

- Carpet replacement: \$2,889.31
- Cleaning: \$250.00
- Revenue loss for May: \$1,500.00
- Filing fee: \$50.00

Total: \$4,689.31

The landlord testified that the tenants had an extra pet rabbit that was not agreed to by the landlord. He said also that the tenant had operated a daycare in the rental unit and this contributed to the carpet damage that was present when the tenancy ended. The landlord submitted a quotation for carpet replacement dated April 21, 2012. He did not install new carpet, but instead replaced the existing carpet with laminate. He did not submit an invoice for the work. He said that a friend performed the flooring replacement for him.

Analysis and conclusion

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an

Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The landlord acknowledged at the hearing that he received the tenants' forwarding address and I find that the tenants served the landlord with documents notifying the landlord of this application as required by the *Act*.

The tenants' security deposit was not refunded within 15 days as required by section 38(1) of the *Residential Tenancy Act* and the doubling provision of section 38(6) therefore applies. I grant the tenants' application and award them the sum of \$3,000.00 being double the amount of their security deposit. The tenants are entitled to recover the \$50.00 filing fee for this application for a total claim of \$3,050.00

With respect to the landlord's claim, the landlord bears the burden of proving the damage said to have been caused by the tenants and the cost of repairs. I have viewed the landlord's photographs and video evidence. The landlord claimed for the cost to replace the carpet pursuant to a provided quote, but he did not install carpet and he did not submit an invoice or evidence to establish the cost of the flooring that he did install. I find that the landlord's evidence does establish that the tenants caused some damage to the carpet and that they did not clean the carpet at the end of the tenancy. I find that the carpet burns were the tenants' responsibility and cannot be blamed on a supposedly faulty fireguard. A fireguard may not prevent the escape of a stray ember and it was up to the tenants to be vigilant when they used the fireplace. The tenants offered the sum of \$350.00 for the damage to the carpet. I award the landlords the said sum for carpet damage and a further sum of \$250.00 for cleaning, including carpet cleaning; the fact that the landlord chose to replace the carpet with other flooring does not relieve the tenants of their responsibility to have the carpets cleaned at the end of the tenancy. The policy guideline with respect to landlord and tenant responsibilities for residential premises contains the following provisions:

CARPETS

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a

tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises

The carpets were not new, but I am not satisfied that replacement was necessary due to the condition they were in at the end of the tenancy and I do not find that the tenants should bear the cost of replacement, however, they should have been left clean, and in lieu of cleaning the landlord is entitled to apply the amount that would have been expended, to defray part of the replacement cost. I do not find any basis for the landlord claim for loss of revenue for May and this claim is denied. The landlord is entitled to recover the amounts stated, as well as the filing fee for his application, for a total award of \$650.00.

Pursuant to section 72 of the *Residential Tenancy Act* I set of the award to the landlord against the award to the tenants. This leaves a net amount due to the tenants of \$2,400.00 and I grant the tenants a monetary order in the said amount. This order may be registered in the Small Claims Court 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: February 27, 2013

Residential Tenancy Branch

