



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 hearing was convened in response to applications filed by both the tenants and the landlord.

The tenants seek:

1. Recovery of double the security deposit; and
2. Recovery of the filing fee paid for this application.

The landlord seeks:

1. A monetary award for compensation for damage or loss;
2. An Order to be allowed to retain the security deposit; and
3. Recovery of the filing fee paid of this application.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the orders sought?

Background and Evidence

This tenancy began on August 1, 2012 for a fixed term which ended January 3, 2013. The landlord says that rent was \$1,600.00 or \$800.00 for each tenant and that the tenants paid a security deposit of \$400.00 each for a total deposit of \$800.00.

The parties agree a Condition Inspection Report was prepared at move-in but not at move-out. The landlord says she is blind and was unable to prepare a move-out inspection report.

The tenant DLY testified that he sent his forwarding address to the landlord by way of registered mail on February 5, 2013. The tenant provided the tracking number and receipts in evidence. DLY testified that the landlord did not return the deposit. Therefore on March 2, 2013 both tenants wrote to the landlord once again seeking recovery of the deposit. The tenants provided the tracking number for the registered letter sent to the landlord on March 2, 2013. The tenants say the landlord did not respond to this request either so they filed their Application seeking recovery of double the deposit on March 17, 2013.

The landlord agreed that she received a letter sometime in February and another in March but she did not return the deposits. The landlord says she had no idea of her obligations under the Act with respect to the deposits and she cannot read the law in this regard. The landlord says she is blind and she is going to call the Ministry to tell them that she must be provided with this information by way of talking books.

The landlord says that in lieu of preparing the move-out Condition Inspection Report she had Molly Maid attend the residence and do an inspection. A Molly Maid invoice was supplied in evidence. In the "special instructions" section of the invoice it states that two graduate students resided in the home it also notes "...disgusting kitchen + bathroom wants an estimate on a Saturday needs it in writing because its coming off damage deposit silverfish windows trim light fixtures French doors cupboards stainless steel fridge – not stove tile not walls, basement – cobwebs, vacuum". The landlord says that in addition to her own cleaning at a cost of \$120.00 for washing windows and vacuuming she had to spend \$448.00 for Molly Maid. The landlord is claiming \$448.00 for Molly Maid and \$120.00 for the time she spent cleaning.

With respect to the state of the rental unit at move out the landlord produced MG as a witness. MG testified that she was acting as the landlord's eyes with respect to this matter. MG testified that the bathroom and the kitchen were of particular concern. MG testified that these rooms were "...grubby..." and "...not adequately cleaned..." When prompted to provide details MG testified that the floors were sticky, that the main areas of the floors were not too bad but the corners and skirting boards were coagulated with dirt, the windows were not cleaned, the cupboards in the kitchen were not cleaned inside or out. MG testified that she did not remember the counter in the kitchen, however she recalls the stove was dirty, and the top of the stove including the stove rings the catcher trays were not cleaned. MG said the bathtub, sink, toilet, windows and mirror they were not as bad as the cupboards and stove. The basement windows had not been cleaned. The basement floors were not swept or vacuumed and she noticed lots of cobwebs. Steps leading up to the main floor not cleaned.

Tenant DLY cross-examined MG asking what dates she attended to do the inspection, and MG responded that she did not remember. MG testified "I don't remember it was as you were leaving..." and "I don't know when you left. The house was empty because I was there with the landlord and she said to me that you had left and the other tenant had asked permission to extend his time in order transport his stuff."

DLY asked MG if she was there at the end of the month or later. MG responded that she was there at the end of the month. DLY asked MG if she inspected the entire house and could she describe what the bathroom and kitchen looked like

DLY asked MG "I have a receipt from Molly Maid who did an inspection themselves why do you suppose [the landlord] had you do another inspection?" MG responded that since her friend (the landlord) is visually impaired she was there to assist her that this was a stressful time and she was another pair of eyes to help decide what needed to be done to get the rental unit up to a standard to rent it out. MG confirmed that she inspected the stove, sink, cupboards, floors and that she ran her finger along the baseboards.

DLY testified that he cleaned out his room and swept and vacuumed all wood floors and swept the stairs and the kitchen. DLY says he cleaned out the bathroom several times. DLY says there was mould on the ceiling that was present at the move in. DLY says he tried to spray the mould but this did not remove it. DLY submits that if Molly Maid or others thought the bathroom was grubby it was likely because of this mould. DLY says he also cleaned out the kitchen but he did not wash the floors or windows,

GJT says he cleaned counters, swept the entire house and cleaned the bathroom and kitchen thoroughly. The tenants say the house is entirely hardwood floors so there were no carpets to have cleaned. The tenants say the house is old, full of cracks and mould and it has lots of bugs. The tenants say the basement is an unfinished cement basement and since they moved in it has always been full of cob webs and dirty.

With respect to the charges for rubbish removal of \$504.00 the landlord says the tenants left goods behind in the garage, inside the home and on the deck. The landlord agreed there were some goods left behind by her and by other tenants but says these goods belong to these tenants. The landlord says she had 2 open houses to get rid of a lot of the goods left behind by the tenants and the rest was removed by the rubbish hauler. The landlord says the tenants left bags of male clothing out in the back deck and they piled items up in the garage including a desk, a blue chair and a bed.

The tenants disagree. They say that all of the goods left behind were left behind by previous tenants and were there when they moved in. They used some of the items during their tenancy but took all of their own goods with them when they vacated. GJT submitted that he did also took the microwave with the landlord's permission.

The landlord says she had to expend \$308.00 for pest control to get rid of the silver fish left behind by the tenants. The landlord says that her daughter did a condition inspection report with the tenants at move-in in August 2012 and there was no mention of silver fish. The landlord says the exterminator stated that silver fish can occur in an old house but particularly when there is dirt and lots of spills not cleaned up.

The tenants responded that this is a very old house with numerous leaky taps, cracks and they imagine there are a lot of pests and insects in the house.

With respect to the stove the landlord says she had to get rid of the stove because it was so dirty. The landlord says she purchased it for a previous tenant in 2006 and it was used, 1 year old, at the time. The landlord says she paid \$400.00 for the stove.

The tenants questioned why they would be charged for both replacing and cleaning the stove.

The landlord responded that the Molly Maid invoice clearly states that the stove was not to be cleaned so they did not charge for this.

Tenant said the stove was in poor condition, all the elements didn't work, the lights did not work, the tenants say it was an old damaged appliance and this is clearly stated on the move-in inspection report.

Analysis

With respect to the tenants claims Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause.

If the landlord fails to comply with Section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (Section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenants' forwarding addresses. The tenants are therefore entitled to a monetary order amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

With respect to the landlord's claims I accept the testimony of both parties. With respect to the cleaning I accept the evidence of the tenants that they did not wash floors or windows. Given that testimony I find that it is likely that the tenants did not clean as well as they should have and I will therefore allow cleaning costs in the sum of \$448.00 as claimed to cover the cost of the Molly Maid invoice. I will not allow the further claim of \$120.00 made by the landlord because I am not convinced that this extra cleaning on top of the Molly Maid invoice was required, further I have insufficient evidence to show the hourly rate charged or the hours spent.

With respect to the rubbish removal charges of \$504.00 this claim is denied. The tenants state the items left behind belonged to other tenants. The landlord agreed that some goods did belong to her or to other tenants but other goods belonged to these tenants. I find the landlord has failed to bring sufficient evidence to demonstrate to me what items were hauled away which may have belonged to these tenants, to the landlord or to other tenants.

With respect to the stove the evidence is that it was a used 2006 model. The tenants say it was an old stove that did not work properly and this is noted on the move-in condition inspection report. I find that the landlord has failed to show that the tenants damaged the stove or that they should pay for its replacement.

With respect to the silverfish the landlord says the tenants brought the silverfish into the home, the tenants say that it is an old home with many cracks, silverfish and other insects present. On a balance of probabilities it is likely that an older home would attract insects and silverfish and I am not convinced that the tenants have caused the silverfish to be in the home, this claim is also denied.

As the landlord has been mostly unsuccessful with her claim I dismiss her claim to recover costs.

Calculation of Monetary Award

Security Deposit paid in August 2012	\$800.00
Double Security Deposit	800.00
Interest on original amount paid from date security deposit paid to date of this order	0.00
Filing Fees	50.00
Less sum awarded to landlord for cleaning	-448.00
Balance payable by landlord to tenants	\$1202.00

Conclusion

The tenants are provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. This is a final and binding Order as any Order of the Provincial Court of British Columbia.

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: June 11, 2013

Residential Tenancy Branch

