



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND FF
MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed their application January 13, 2014, seeking a Monetary Order for damage to the unit site or property and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed her application December 02, 2013, to obtain a Monetary Order for the return of double her security deposit.

The Landlords' son, hereinafter referred to as Agent, appeared to represent the Landlords, indicating that they were not proficient in English. The Agent and Tenant appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Are the Landlords entitled to compensation for damages to the rental unit, in accordance with section 67 of the *Residential Tenancy Act*?
2. Is the Tenant entitled to a Monetary Order for the return of double her security deposit, in accordance with section 67 of the *Residential Tenancy Act*?

Background and Evidence

It was undisputed that the parties entered into a month to month tenancy that commenced in April 2012. The Tenant was required to pay rent of \$900.00 on the fifteenth of each month and in April 2012 the Tenant paid \$450.00 as the security deposit. The Tenant vacated the property and returned the keys on November 12, 2013. Both parties were present at the move out inspection on November 17, 2013; however, no condition inspection report forms were completed or signed at move in or at move out.

The Agent stated that the Landlords have resided in the upstairs of this house since purchasing the property in 1987. The basement suite was in existence at the time they purchased the property and they have continued to maintain the suite all along.

The Agent testified that the Landlords are seeking \$650.00 for damages which includes \$90.00 for carpet cleaning, and \$560.00 to repair two doors and two closet doors, repair kitchen cabinets, and to fix a drain pipe located under the kitchen sink. They obtained two quotes for the work and have since had all the work completed so they could re-rent the unit.

The Tenant testified and agreed that damage was caused to the doors during her tenancy. She indicated that they had hung a clothes hook over her son's bedroom door and she was not aware that it was causing damage until she moved out. She had attempted to repair the damage by filling it with wood filler before she moved out. The Landlords requested that she meet with the repair person at the rental unit on November 17, 2013. She agreed to have the repair taken out of her security deposit but does not feel it would cost \$200.00 to repair the doors. She is of the opinion that the cost should only be around \$100.00.

The Tenant disputed the claim for repairs to the sink drain and argued that the drain was the exact same way when she moved into the unit. She did not do anything to change the drain or cause damage to it.

The Tenant stated that she did not pay attention to what the cupboards looked like when she first moved into the unit. She argued that she did not damage the cupboards and although she had a rice cooker and kettle on her counter they were not placed where the damage is noted. She stated that she had her toaster and blender on the counter where the damage was supposed to have occurred; therefore, it would not have been caused during her tenancy.

The Tenant did not provide evidence or testimony in dispute of the Landlords claim for carpet cleaning.

The Agent and Tenant referred to photographs provided in each of their evidence to point out the condition of the rental unit at the time this tenancy had ended. The Tenant argued that she has the right to claim for double her deposit because it was not returned within fifteen days. The Agent argued that his parents do not understand the *Residential*

Tenancy Act as English is their second language and he was not aware that publications regarding the Act are provided in different languages.

The parties were given the opportunity to settle these matters; however, when it appeared that they were too far apart the Tenant requested that an arbitrated decision be issued.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Landlord's claim

Sections 24 and 35 of the Act provide that a landlord's right to claim damage against a deposit is extinguished if, having made an inspection with the tenant, the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. That being said, this does not prevent the Landlord from claiming damage or loss under section 67 of the *Act*.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Tenant accepted that damage was caused to the bedroom door, frame, and closet doors during her tenancy, which she was unsuccessful in repairing. Notwithstanding the Tenant's argument that she feels \$224.00 is too much money for the repair, I accept the Landlords' submission that their quotation was a fair price for the repair, when considering labour costs and materials that would be required. Accordingly, I award the Landlord damages of **\$224.00**.

In this case, the evidence supports the rental unit was constructed more than 27 years ago. Given the age and character of the cupboards in the unit, as displayed in the photographic evidence, they appear to be original to when the suite was constructed.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part 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 Landlords claim for damages to the kitchen cupboards and sink drain; however, the Tenant disputes that any damage was caused to those items during her tenancy. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy. In the absence of a move-in condition inspection report form, that would prove the condition of these items at the start of the tenancy, the only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Landlords' burden of proof. Accordingly, I dismiss the Landlords' claim for damages to the kitchen cupboards and sink drain, without leave to reapply.

The *Residential Tenancy Policy Guideline # 1* provides that at the end of a tenancy of one year or more a tenant will be held responsible for steam cleaning or shampooing the carpets. Where a tenant has carelessly stained the carpet they will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

In the absence of evidence to the contrary, I accept the Landlords' submissions that the carpet was stained and was not steamed cleaned by the Tenant at the end of the tenancy. Accordingly, I award the Landlords their claim for carpet cleaning in the amount of **\$90.00**.

The Landlords have primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Landlords' Monetary Award

Damages to doors	\$224.00
Carpet cleaning	90.00
Filing Fee	<u>50.00</u>
Landlords' Award	<u>\$364.00</u>

Tenant's application

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the tenancy ended November 12, 2013 and the Tenant provided the Landlords with her forwarding address on November 12, 2013. Therefore, the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than November 27, 2013. The Landlords did not return the deposit and they did not file their application for dispute resolution until January 13, 2014.

As per the evidence before me the Landlords were cautioned to familiarize themselves with the legislation in a previous hearing held October 24, 2013. Therefore, I do not accept the Agent's argument that his parents did not comply with the Act because they were unfamiliar with it.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the Act and that the Landlords are now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the security deposit plus interest in the amount of **\$900.00** (2 x \$450.00 + \$0.00 interest).

Monetary Order – I find that these claims meet the criteria under section 72(2)(b) of the Act to be offset against the other as follows:

Tenant's award	\$900.00
Less: Landlords' award	<u>-364.00</u>
Offset amount due to the Tenant	<u>\$536.00</u>

I hereby Order the Landlords to pay to the Tenant **\$536.00**, forthwith.

Conclusion

I HEREBY ORDER the Landlords' monetary award of \$364.00 be offset against the Tenant's monetary award of \$900.00.

The Tenant has been issued a Monetary Order in the amount of **\$536.00**. This Order is legally binding and must be served upon the Landlords. In the event that the Landlords do not comply with this Order it may be filed with the Province of British Columbia 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: March 10, 2014

Residential Tenancy Branch

