



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lorette Tardiff and Michael Dix
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a hearing with respect to the landlords' application for a monetary award and an order to retain the tenants' security deposit in partial satisfaction of the monetary award. The hearing was conducted by conference call. The named landlords and the tenants called in and participated in the hearing. The tenant's aunt attended as a representative and witness on behalf of the tenants

Issue(s) to be Decided

Are the landlords entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a duplex apartment on Vancouver Island. The landlord owns and rents 8 similar duplex units located on the same street. The tenancy began on August 1, 2015 for a fixed term ending July 31, 2016. The monthly rent was \$850.00, payable on the first of each month. The tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00 at the start of the tenancy.

The tenancy ended and the tenants moved out at the end of the fixed term. The landlord testified that during the tenancy, in January, 2016 the tenant complained of a condensation problem in the rental unit, particularly in and around the windows. The landlord attended at the rental unit. He said there was excessive moisture that was causing damage to the rental unit. He gave the tenants a letter dated January 12, 2016 setting out his observations and instructions to reduce moisture levels in the rental unit.

The landlord said the tenants did not agree that their "living practises" contributed to the moisture problem.

The landlord said that the tenants moved out of the rental unit in mid-July, but did not allow the landlord access to the rental unit until the end of the tenancy. The landlord testified that the male tenant attended the condition inspection on July 31, 2016 along with the tenant's aunt, who was identified at the inspection as the tenant's agent. The landlord said that the tenant's agent was very belligerent. The landlord said that despite efforts by the landlord and the owner to be amicable, the tenant and his agent refused to participate in the inspection and left without completing the report.

In the application for dispute resolution filed on August 8, 2016, the landlord claimed a monetary award in the amount of \$1,300.00.

In a monetary order worksheet dated August 25, 2016 and submitted to the Residential Tenancy Branch on September 2, 2016, the landlord set out claims for the following items:

• Home Depot, Coat rack, strainer, vanity light, element, 3 stove burner bowls	\$217.80
• Home Depot, Netting for screens:	\$16.70
• Home Depot, stove burner bowl:	\$17.33
• Private sale: used fridge:	\$275.00
• Home Hardware, front door seal,	\$29.19
• Handyman; for labour and material to repair damage:	\$638.00
• Cleaning services July 31:	\$125.00
• Cleaning services August 1:	\$75.00
• Damage to kitchen cabinets, depreciation factor:	\$195.00
• Filing fee:	\$100.00
• Canada post charges:	\$27.51
Total:	\$1,716.53

The landlord submitted 119 pages of close-up photos of alleged damage, pictures of necessary cleaning and yard work that the tenants either caused or failed to perform before the tenancy ended. The landlord said there was water damage to the window frames and ledges throughout the rental unit. The coat rack in the front entrance was damaged; the tenants made an improper repair and it had to be replaced. The landlord said there was water damage to the baseboards in the bathroom, in the front bedroom closet and in the kitchen. The landlord said there was extensive damage to walls and

trim in the rental unit, consisting gouges, scratches and scuff on all the walls. The landlord said the damage exceeded normal wear and tear.

The landlord testified that the kitchen cabinetry suffered significant moisture damage. The stove top burner rays were badly damaged and had to be replaced. A light fixture was rusted due to high moisture levels; it was replaced. The refrigerator was badly dented and damaged. The bottom shelving was broken. The landlord replaced the fridge with a good used unit. The landlord claimed that the tenants' three cats caused damage to the screens and the door seal. The landlord said there was a significant amount of cleaning that had to be done to put the unit into a suitable state to be re-rented.

The tenants testified that there was a pre-existing mould problem and mould on the windows due to condensation. The tenants asked the landlord to deal with the mould problem in August, soon after moving in. They referred to text messages exchanged with the landlord in August concerning the mould problem. The tenants said that the landlord did deal with the problem and the tenants raised the matter again in January and this was when the landlord finally attended to investigate. The tenants said that the moisture problem in the rental unit persisted no matter what they did to combat it. They suggested that this was a problem that was common to the other duplex units owned by the landlord and it was related to the design of the units, not to the tenant's lifestyle or use of the unit. The tenant claimed that the landlord entered the rental unit before the scheduled inspection on July 31, 2016 and conducted a move-out inspection without the tenants being present. The tenants said that on July 31, 2016 when the male tenant attended with his aunt, the inspection form was already completed and the tenant was asked to sign the form and accept charges of \$1,373.00. The tenant said that the landlord refused to allow the tenant's aunt to remain in the unit during the inspection. The tenant and his aunt claimed that the landlord assaulted her and physically threw her out of the rental unit, injuring her arm; she reported the incident to the police. The tenants denied damaging the refrigerator; they said the shelving in the fridge broke the day after they moved in and said it was due to a pre-existing defect. They said there were a few dents in the refrigerator, but nothing major.

The tenants' representative testified that she is a building manager and familiar with managing rental properties. She said that the rental unit was left in a reasonable state of cleanliness and repair. She considered that any damage to the rental unit amounted to reasonable wear and tear. She remarked that the cabinetry and finishings in the rental unit were constructed of poor quality materials and she attributed the extent of evident wear to cabinetry to the quality of the materials. The tenants questioned the authenticity of the landlord's invoices for the cost of repairs and cleaning.

The landlord disputed the tenants' assertions that the inspection report was completed before the scheduled meeting on July 31st. The landlord said that there was no mould or condensation problem in any of the other similar duplex units owned by the landlord. The landlord said that the necessary cleaning that was performed took 9 hours and could not be considered as normal wear and tear and the unit was not left in a reasonable state of cleanliness. The landlord noted that the move-in condition inspection report did not contain any mention of pre-existing damage to the cabinetry or walls and there was mention only of some small dents on the refrigerator.

Analysis

I accept the landlord's documents and testimony as establishing that the claims for parts and materials are justified, including such items as the coat rack, sink strainer, stove parts, door seal and netting for screens. I do not allow the claim for the cost of a bathroom vanity light fixture, said to be rusted. I am not satisfied that the rusted fixture in a bathroom, which is necessarily a room that will experience high humidity under normal use should be attributed to some lack of care on the part of the tenants. I reduce the Home depot invoice for material from \$217.80 to \$150.00. The other invoice amounts are allowed in the amounts claimed; I consider that these amounts all relate to damage caused by the tenants or their pets that exceeded normal wear and tear. I accept the landlord's evidence that the fridge was damaged by the tenants and it was reasonable to mitigate the loss by replacing it with a used refrigerator; I allow the claim in the amount of \$275.00.

I find, based on the testimony and photographs that the rental unit was not left reasonably clean at the end of the tenancy and I allow the cleaning charges in the total amount of \$200.00 as claimed.

With respect to the handyman's invoice for repairs, including emergency repairs, I am not satisfied that the tenants should be held responsible for water damage, or damage caused by condensation. The landlord claimed that the problem was caused by the tenants' lifestyle and use of the rental unit. The landlord alleged that there have been no similar problems in other units. I note that the tenants reported a condensation problem and window frame mould in the rental unit within the first month of the tenancy. The tenants submitted that it amounted to a pre-existing problem with the rental unit. I find that the landlord has failed to establish on a balance of probabilities that the tenants caused the problem or that they should be found liable for damage due to water condensation in the rental unit. I disallow the claims by the landlord's handyman for

repair of alleged water damage. Referring to his invoice dated August 1, 2016, I allow the following items:

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| • Repair gouges in wall, ceilings and trim: | \$60 |
| • Remove fabric sheets jammed in dryer drum: | \$15 |
| • Straighten toilet and adjust seat: | \$15 |
| • Replace scratched/gouged floor tiles in kitchen: | \$42 |
| • Cut lawns weeding, weed eating etc. | \$75 |

Total:	\$137
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I accept the landlord's testimony and photographic evidence as establishing that the tenants did cause damage to the rental unit that exceeded normal wear and tear and that the charges set out above, including care of lawn and yard was necessary due to the tenants' neglect to keep it up.

The landlord claimed an additional amount of \$160 charged by the handyman for emergency repairs on short notice. I do not find that the items I have allowed can be considered to constitute emergency repairs or that they were so urgent that a special travel or call out fee should be allowed, in addition to charges claimed for the work.

I do not allow the landlord's claim for accelerated depreciation charge for damage to cabinets based on my finding that the tenants should not be found to be liable for the water damage/condensation claims generally.

He landlord is entitled to recover the \$100.00 filing fee for his application, but the charge for registered mail is not a recoverable cost; the only relating to a claim that may be recovered is the cost of the filing fee. The claims that have been allowed are as follows

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| • Home Depot, Coat rack, strainer, element,
3 stove burner bowls | \$150.00 |
| • Home Depot, Netting for screens: | \$16.70 |
| • Home Depot, stove burner bowl: | \$17.33 |
| • Private sale: used fridge: | \$275.00 |
| • Home Hardware, front door seal, | \$29.19 |
| • Handyman; for labour and material to repair damage: | \$137.00 |
| • Cleaning services July 31: | \$125.00 |
| • Cleaning services August 1: | \$75.00 |
| • Filing fee: | \$100.00 |

The total award to the landlord is the sum of \$925.22. I order that the landlord retain the tenants' security deposit and pet deposit in the amount of \$850.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$75.22. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's claim has been allowed in part. The landlord has been order to retain the tenants' security deposit and pet deposit in partial satisfaction of the award and a monetary order has been granted in the amount of \$75.22.

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 6, 2017

Residential Tenancy Branch

