



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNSDS-DR

Introduction

The landlords applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The landlords us me for the following orders against the tenants.

1. Compensation for monetary loss in the amount of \$1,732.38.
2. Reimbursement for the \$100.00 filing fee for this application.

The tenants also applied for Dispute Resolution. The tenants ask us for the following orders against the landlords:

1. Return of their security deposit in the amount of \$1,100.00 [the 'Deposit'].
2. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 29 September 2023, along with an advocate. The tenants also appeared.

The parties followed the hearing with written submissions, which were due to be completed by 10 November 2023.

None of the participants physically appeared before us. This hearing did not utilise any video technology.

Issues to be Decided

Have the landlords proved their claim against the tenants for compensation?

Are the tenants entitled to the return of their Deposit?

Must the parties reimburse each other for the cost of filing their application?

Background and Evidence

This tenancy lasted for two years, at the beginning of which the tenants made their Deposit with the landlords as security.

The landlords told us that at the end of the tenancy they needed to arrange for the following:

1. cleaning up a dirty rental unit in the amount of \$556.60 (supported by a video depicting dirt and dust left behind under a large appliance, and an invoice for cleaning issued to landlords for a 'unit price' of '530' plus taxes, and);
2. repainting of walls (supported by a photo of some gouges and marks in some walls, and an invoice for 'inside painting job' in the amount of '500' plus taxes);
3. replacement of a door (supported by a receipt in the amount of \$250.88); and
4. plumbing for a clogged toilet (supported by an invoice for 'goods and labor' [sic] in the amount of \$400.00, and a photo of a clogged toilet).

The landlords total these amounts as \$1,732.38.

In response, the tenants told us the following:

1. they spent a day-and-a-half cleaning the unit before the move-out inspection, including washing the walls;
2. they offered to come back and do further cleaning, but the landlords refused, and simply sent the tenants invoices after the fact;
3. they offered to paint the walls themselves, but the landlords refused, wanting them to be 'professionally' painted;
4. they offered to buy paint and putty for walls, which they say would've cost only about \$150.00;
5. they offered to buy a new door, but the landlords declined this offer; and
6. the toilet never worked properly and was always leaking such that the landlords had to often get plumbers in to fix the toilet (supported by a screenshot of communications with the landlords from February about water issues).

Analysis

We have considered all the statements made by the parties and the documents to which they referred us. And we have considered all the arguments made by the parties.

In analysing the landlords' claim, we considered Residential Tenancy Policy Guideline 5: Duty to Minimize Loss, which reads (in part):

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided... Compensation will not be awarded for damage or loss that could have been reasonably avoided.

The landlords claim that the unit needed further cleaning, and the tenants effectively concede that, by having offered to come back and clean further. But the landlords denied them this opportunity, which was a failure to mitigate: had the tenants been allowed to come back to clean, then the landlords could have avoided the cost of hiring cleaners. We deny this part of the claim.

The tenants effectively concede that the walls needed painting, and they offered to do this themselves, but the landlords refused. This means that the landlords missed an opportunity to mitigate: had the tenants been permitted to paint the unit, it would have cost the landlords nothing.

Aside from labour, the tenants effectively submit that the material for the walls would have cost \$150.00. As the landlords' invoice provides no detail to be able to assess whether the '500' were reasonable, we will accept the tenants' concession that \$150.00 is reasonable.

As for the door, the tenants concede that it needed to be replaced, as they offered to buy a new one. But we do not see that whether the tenants bought the door or the landlords that there would have been any mitigation, and so we accept this portion of the claim, in the amount of \$250.88.

As for the toilet, the tenants insist that this was a pre-existing problem. The landlords insist that it was the fault of the tenants, but offer nothing to corroborate that. If the

landlords had provided a statement from their plumber, who presumably could have differentiated between the work performed previously in the unit regarding the toilet and the work needed to be done on the day of the move-out, then perhaps the landlords could have met their evidentiary burden.

Instead, we found it just as probable that the toilet was clogged because of a recurring issue with the plumbing as it being clogged because of the tenants. As this is a claim brought by the landlords, it is their burden to meet, which they have not. We do not accept that the issue with the toilet was probably caused by the tenants.

As the landlords did not succeed in their application, we do not order that the tenants must reimburse them for the cost of filing their application. But because the tenants succeeded in *their* application for the return of their Deposit, we will order that the landlords reimburse them for their filing fee.

Conclusion

We grant that the landlords are entitled to retain \$400.88 of the Deposit to compensate them for the painting required in the unit, as well as for the replacement door.

We order that the landlords must return the remainder of the Deposit (*i.e.* \$699.22) to the tenants. We attach a monetary order in that amount, plus \$100.00 for the filing fee incurred by the tenants. The tenants must serve this order on the landlords as soon as possible. If the landlords do not comply with our order, then the tenants may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the tenants can enforce our order as an order of that court.

This decision is made on authority delegated to us by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: 24 November 2023

Residential Tenancy Branch