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The Importance of Move-In Inspection Reports to the Return of Security Deposits in Residential Tenancies

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Case Commented On: *Safri v Maclean*, 2022 ABPC 113 (CanLII)

The judgment of Judge Jasmine Sihra of the Northern Region Provincial Court is a good reminder to both landlords and tenants that a move-in inspection report is required by section 19(1) of the *Residential Tenancies Act*, SA 2004, c R-17.1 (*RTA*). Not only is it mandatory, but a landlord cannot deduct from a tenant's security deposit without a move-in inspection report (section 46(5) *RTA*). That does not mean a landlord cannot sue a tenant for damage to the rental premises that goes beyond normal wear and tear. They can. But Judge Sihra's decision in *Safri v Maclean* illustrates that it is much harder for a landlord to win if they do not have a move-in inspection report. Without one, a landlord must prove their tenant was the cause of any damage to the premises, and they need evidence to do so. Many of them do not have that evidence, as illustrated by *Safri v Maclean* and the three decisions of Tenancy Dispute Officers (TDOs) of the Residential Tenancies Dispute Resolution Service (RTDRS) about move-in inspections that Judge Sihra refers to.

Neither TDOs nor Provincial Court judges who are hearing civil claims are bound by the rules of evidence that typically govern judicial proceedings (*Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, section 14; *Provincial Court Act*, RSA 2000, c P-31, section 36(1)). Both TDOs and Provincial Court judges hearing civil claims have the discretion to admit any evidence. It is therefore instructive to see how *Safari v Maclean* deals with evidence of damages to the rental premises.

Facts

The landlord and tenants entered into a written residential tenancy agreement for a house with attached garage on August 27, 2017. No move-in inspection was conducted, and no move-in inspection report was completed. The security deposit was $2,100, as was the monthly rent, which did not include utilities. The tenants moved out in May 2020.

In September 2020, the landlord sued the tenants in Provincial Court for $17,000 for unpaid rent, unpaid utilities, cleaning, damages, and other miscellaneous matters. The tenants counter-claimed for $5,000 for the work they did cleaning up after a flood, damages caused by a broken fridge, and defamation.

The landlord testified that there was no damage to the rental premises when the tenants moved in but the tenants testified that there were warped baseboards, broken windows, and a broken shelf.

The tenants admitted to damaging two doors and the toilet tank during their tenancy. They also admitted they did not clean the rental premises when they moved out, and they did not seek the return of their security deposit. The tenants also admitted that they owed for rent ($700) and for unpaid utilities.

In the end, Justice Sihra awarded the landlord a total of $3,769.19 for rent arrears ($700), unpaid utilities ($969.19), and damage to the premises and failure to clean and remove garbage ($2,100). She awarded the tenants the return of their $2,100 security deposit, but nothing for their counter-claims. Neither party was awarded costs. The net difference was $1,669.19 in damages owing by the tenants to the landlord – approximately one-tenth of the amount the landlord had claimed.

Law

Section 21 of the *RTA* sets out the covenants that bind every residential tenant and are a part of every residential tenancy agreement. In this case the relevant covenants are found in section 21(a), (e) and (f):

> 21 The following covenants of the tenant form part of every residential tenancy agreement in Alberta:
>
> (a) that the rent will be paid when due;
>
> …
>
> (e) that the tenant will not do or permit significant damage to the premises, the common areas or the property of which they form a part;
>
> (f) that the tenant will maintain the premises and any property rented with it in a reasonably clean condition; (emphasis added)

The relevant statutory provisions about move-in inspections are found in sections 19 and 46 of the *RTA*:

> 19(1) A landlord and tenant shall inspect the residential premises within one week before or after a tenant takes possession of the residential premises, and the landlord shall, forthwith on completion of the inspection, provide the tenant with a report of the inspection that describes the condition of the premises.
>
> …
>
> (5) A report must contain the prescribed statements and be signed in accordance with the regulations.
>
> 46(1) In this section,
>
> …
>
> (b) "normal wear and tear" in respect of residential premises means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance;
>
> …

> (5) No deduction may be made from a tenant's security deposit for normal wear and tear to the residential premises during the period of the tenant's tenancy.
>
> (6) A landlord shall not make a deduction from a tenant's security deposit for damages to the residential premises unless the requirements respecting inspection reports under section 19 have been met. (emphasis added)

A landlord who cannot deduct from a tenant's security deposit because of the prohibition in section 46(6) can still sue a tenant for damages under section 26 of the *RTA*:

> 26(1) If a tenant commits a breach of a residential tenancy agreement, the landlord may apply to a court for one or more of the following remedies:
>
> (a) where the breach consists of non-payment of rent, recovery of arrears of rent;
>
> …
>
> (d) recovery of damages resulting from the breach.

As for evidence, Judge Sihra noted that the burden of proof in civil cases is the balance of probabilities, i.e., it is more likely than not that an alleged event occurred (at para 13, citing*F.H. v McDougall*, 2008 SCC 53 (CanLII) at para 49). A landlord claiming damages must prove two things: first, a breach of the residential tenancy agreement and, second, the damages that flow from that breach. Oral evidence alone, when not contradicted by the other party, could be enough proof on the balance of probabilities (at para 23, citing *MKM Custom Homes Ltd v 1101731 Alberta Ltd*, 2019 ABCA 18 (CanLII) at paras 19-20).

For the impact of section 46(6) of the *RTA*, Judge Sihra referenced three decisions of the RTDRS. In *19001233 (Re)*, 2019 ABRTDRS 34 (CanLII), where inspection reports had not been completed when the tenants moved in, she noted that TDO Young held that the landlord was not entitled to keep any portion of the security deposit, but could still apply for damages (at para 19). She also noted that TDO Hewitt had pointed out in *20002060 (Re)*, 2020 ABRTDRS 19 (CanLII), that a damages claim would be harder for the landlord to prove without inspection reports (at para 21).

Judge Sihra went on to quote from TDO Young about the evidentiary relevance of inspection reports in *21002885 (Re)*, 2021 ABRTDRS 17 (CanLII):

> What does the absence of any relevant inspection report mean? The *RTA* requires inspection reports, I presume, because, if properly conducted and completed, they will constitute reliable evidence of the condition of the rental premises at the beginning and the end of the tenancy, and thereby go a long way to resolve disputes over alleged damages to the rental premises.
>
> Section 46(6) of the RTA provides that a Landlord may not make a deduction from a security deposit for damages if inspection reports are not completed. However, the absence of inspection reports does not preclude a landlord from making a damages application. Without properly completed inspection reports, the Landlord is missing a key piece of evidence, but a landlord may submit other

> persuasive evidence to support their claim. (at para 20, quoting from *21002885 (Re)* at 2-3, emphasis added)

The key piece of evidence missing without a move-in inspection report is proof of a breach of the residential tenancy agreement by a tenant.

Analysis

I will not discuss every claim that the parties made and what Judge Sihra said about each. I will summarize the evidence produced to prove both the breach and the damages for the most common type of moving-out claims, and why those claims did or did not succeed in this case. My focus will be on the evidence that was and was not produced to prove damages, as was the judge's.

Damage to the Premises

Tenants are liable for "significant damage to the premises" under section 21(e) of the *RTA*. In this case, the tenants admitted responsibility for damage to the master bedroom door and the door between the garage and house (at paras 11, 29, 59), as well as damage to a toilet tank (at paras 11, 29, 62). As a breach of section 21(e) was established by this admission, all the landlord needed to do was prove the amount of damages that should be awarded for the two doors and the toilet tank. The landlord produced a hardware store receipt for two doors priced at $85 each and one door priced at $78 (at para 59). The landlord did not indicate which price was for the master bedroom door and so the lower amount of $78 was awarded (at para 59). As for the admittedly damaged toilet tank, the landlord failed to produce any evidence at all about the cost of replacing the tank or the toilet. Because they did not meet their burden of proof, no damages were awarded for the admittedly damaged toilet tank.

The landlord claimed for a lot more damage than just two doors and a toilet tank, but they were unsuccessful with the rest of their claims, either because they failed to produce any evidence, or because their evidence was not good enough to meet the landlord's burden of proof. The failure to produce any evidence, when the landlord needed to prove their claim on the balance of probabilities, meant they lost all of those additional claims.

For most of the claims, the landlord produced some, but not enough, evidence to meet their burden of proof. For example, the landlord claimed for a new hot water tank, but produced only a receipt for a new hot water tank and a photograph of the laundry room which did not show the alleged dent in the old hot water tank that the landlord claimed had allowed water to flow on to the floor (at paras 33, 35). The tenants testified that the hot water tank was working when they left and claimed that any water on the floor was due to a malfunctioning sump pump, a malfunction that had happened in 2018 as well (at para 34). The landlord therefore failed to produce enough evidence to prove that it was more likely than not that the hot water tank was damaged when the tenants left. The landlord did not prove a breach of section 21(e)) of the *RTA* and did not prove that the tank could not be repaired rather than replaced. No amount was awarded to the landlord for the new hot water tank (at para 35).

The landlord's claims for a new range and a new dishwasher suffered the same fate as their claim for the hot water tank and for much the same reasons. The landlord produced only receipts for the

purchase of new appliances (at paras 36-37). They provided no proof of a breach – no proof that the range and dishwasher's problems were something more than normal wear and tear and therefore something the tenant was responsible for. They also failed to show (with an estimate for the cost of repairs, for example) that the range and dishwasher could not be repaired and had to be replaced (at paras 36-37).

The landlord also failed to prove that other damage they claimed for was not there when the tenants moved in and was not simply a matter of normal wear and tear. The lack of a move-in inspection report doomed their claims for a crack in the garage floor (at para 41) and damage to the weatherstripping and baseboards (at para 43).

The landlord also claimed for new flooring (at para 48) and new paint (at paras 51-53), but failed to produce evidence (such as the evidence of a professional carpet cleaner or painter, or a video) that the carpet could not be cleaned and had to be replaced or that the ceilings and walls were incapable of being cleaned. No breach of section 21(e) of the *RTA* by the tenant was established and so the flooring and painting became part of the claim for a breach of section 21(f) of the *RTA*, i.e. the cleaning claim (at paras 50, 53).

In connection with the painting, even if the landlord had proven significant damage was done by the tenant, the landlord failed to prove damages, i.e., how much the painter had been paid (at para 54). The only evidence was bank statements that showed cash withdrawals. As Judge Sihra noted, cash payments do not prove who was paid and why (at para 54). Receipts, invoices, and time sheets would all have been acceptable evidence.

Cleaning

The tenants admitted that they did not clean the premises when they left, and that they left garbage behind in the house and garage (at paras 12, 32, 55). Between that admission and the landlord's testimony and photographs showing that the premises were very dirty when the tenants left (at para 74), the tenants' breach of section 21(f) of the *RTA* was proven.

However, the landlord still had to prove damages. How much of their time and money did they spend cleaning the rental premises? The landlord swore in their affidavit that $4,680 was paid to a "Painter and Cleaner." The landlord did not explain how much of that amount was for cleaning, did not provide an invoice, receipt, or cancelled cheque to prove payment for cleaning (at para 31). Neither did they testify about the hours required to clean, what was done or the cost of cleaning (at para 74).

The landlord's evidence for their garbage removal claim was better. They provided two invoices from a garbage disposal company, one for delivery and monthly rental of a bin in June 2020 and the other for monthly rental and removal and emptying of the bin in July 2020 (at para 56). However, because the tenants moved out in May and the landlord did not explain why both invoices were required to remove the tenant's garbage, Judge Sihra only accepted the $129.01 June invoice (at para 57).

The tenants – who apparently had not realized that the landlord could not deduct from their security deposit – testified that their $2,100 security deposit should have covered all the cleaning that was required (at para 74). The judge accepted the tenants' estimate of the costs to clean because "they were in the best position to know what the state of the premises was when they moved out" and their assessment was a reasonable one (at para 74). Indeed, in recognition that the landlord's success on their damages and cleaning claims was primary due to the tenants' admissions, Judge Sihra subsumed the only two damage claims that the landlord was able to prove – $129.01 for garbage removal and $111.83 for damage to two doors – as well as the carpet cleaning into the $2,100 awarded to the landlord for the breach of section 21(f) of the *RTA*. The landlord's failure to prove that new flooring and paint were required, as well as their failure to show the extent and duration of the cleaning required, also meant that the landlord's claim for the loss of rental income during the time they were painting and re-flooring was not allowed (at para 64).

Conclusion

The most obvious lesson to be learned from *Safri v Maclean* is that a move-in inspection report is very important to landlords. Landlords – who do not need the cooperation of tenants to conduct a move-in inspection (section 19(3) *RTA*) – will find it much easier to prove a breach of the residential tenancy agreement by tenants if they have a properly completed move-in inspection report.

From a tenant's perspective, the lack of a move-in inspection report means that they are entitled to get their security deposit back, no matter what. However, it seems likely that many tenants – like the tenants in this case – let their landlords keep the security deposit to cover rent arrears or damages or cleaning. This is suggested by the 2020-2021 RTDRS Annual Report – its first annual report. Of the 10,973 applications received by the RTDRS in that fiscal year, 72.7% were landlords' applications for possession (i.e., evictions), 9% were landlord's applications for damages, and 9% were tenants' applications for return of their security deposits.

Safri v Maclean illustrates why tenants should demand their security deposits back if there is no move-in inspection report or if the landlord is seeking to keep more than they are entitled to. The landlord in this case claimed over $15,000 in damages for cleaning, new appliances, new flooring, painting, and more, but received an award of only $2,100 for those items. Many landlords will have proper proof of damages, but not all of them will. More tenants should require their landlords to prove their claims.

Safri v Maclean also illustrates that the location of the burden of proof is very important. Who must prove their claim on the balance of probabilities? Whoever that person is, they will lose if they say "A" and the other party says "B" and neither has any other evidence.

Th
e case also provides many examples of the two different things that must be proven in claims for damages. First, a breach of the residential tenancy agreement – e.g., a breach of either section 21 of the *RTA* if the tenant's breach or of section 16 if the landlord's breach – must be proved. If the breach is established, then the damages must also be proved. And *Safri v Maclean* has many

examples of what is and what is not good enough evidence when it comes to things like cleaning, painting, and the replacement of appliances.

Finally, *Safri v Maclean* also illustrates that it pays to admit the truth. The tenants made a number of admissions about damage they caused. This did save the landlord from proving that the tenants had breached their residential tenancy agreement. However, the admissions also seem to have served the tenants well when their account of the facts differed from the landlord's.

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