



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNSD, FF

Introduction

This application was brought by the tenants seeking return of the balance of their security deposit after agreed upon deductions were taken into account.

Issue(s) to be Decided

This application requires a decision on whether the tenants are entitled to a Monetary Order for the unreturned portion of the security deposit, to which they did not agree and recovery from the landlord for the filing fee for this proceeding.

Background and Evidence

This tenancy began September 23, 2007 under a fixed term rental agreement set to end on January 31, 2008 and subsequently evolving into a month to month tenancy. Rent was \$1,055 per month and the landlord holds a security deposit of \$527.50 paid on September 8, 2008 plus an additional \$100 paid on or about June 1, 2008 when members of the tenants' family occupied the suite above for a short term stay.

The rental unit was fully furnished.

This matter is complicated somewhat by the fact that both parties breached the *Act*.

The tenants breached the *Act* by giving only five days notice to end the tenancy rather than minimum one month following the next rent due date as required by section 45 of the *Act*..

The landlord's breached the *Act* by failing to make application for dispute resolution within 15 days of the end of the tenancy and retaining a portion of the security deposit not agreed to by the tenants as required by section 38 of the *Act*.

Both parties explain their breaches by stating they had, or believed they had, or could readily obtain, the consent of the other party.

In either case, while it is commendable that the parties believed they could resolve matters in dispute through cooperation, their departures from the requirements of the legislation make it somewhat difficult to strictly apply the remedies that assume those requirements have been strictly followed.

At the time of the hearing, the parties had agreed that the landlord should retain \$75 of the deposit for carpet cleaning, \$75 for a hydro bill and \$60 for miscellaneous items missing or damaged at the end of the tenancy. The landlord had sent a cheque to the tenants for \$127.50 which the tenants have not cashed and which they have agreed to return to the landlord who will replace it with one representing the outcome of this hearing.

The items on which the parties currently disagree include three hand towels which the landlords value at \$5 each and one limited edition art print which the landlords value at \$275. The landlords stated that the hand towels were not of major concern and expressed willingness to absorb that cost.

As to the art print, the landlord submitted a list of items and chattels in the rental unit at the beginning of the tenancy which includes and describes the print in question.

While the tenants had initially claimed that they had never removed any such items from the rental unit, they conceded to a smaller art work and another item later found in the garbage.

Analysis

I find that the limited edition print was, in fact, in the rental unit when the tenants took possession, that they are responsible for its replacement, and that its value is \$275 as claimed.

I so conclude because:

1. The tenants conceded that they had moved and removed some of the pictures in the rental unit that were not to their taste. The landlord stated that, if the tenants did not wish to display any of the art, he would happily have removed it and put it into storage or displayed it elsewhere. I find that the tenants owed a duty to the landlord to advise him if they were moving the art work and to give him an opportunity to see to its security.
2. The landlords' evidence appears to be highly credible, supported by two affidavits and their fairness on all verifiable matters. For example, their willingness to accept only five days notice from the tenants to end the tenancy and their volunteered information that there had been previous minor damage to the picture frame in question speaks to the veracity of the landlords' evidence.

3. The landlords' recollection of this particular art work is enhanced by the fact that it was the first painting they purchased when they bought the building and had initially hung it in the lobby and, therefore, attached considerable sentimental value to it.

As breaches of the *Act* by both parties contributed to this dispute, I find that the filing fee should be split equally between them.

Therefore, I find that the tenants are entitled to a return of the balance of their security deposit calculated as follows:

Security deposit	\$527.50
Interest (September 23, 2007 to date)	8.34
Supplementary security deposit (approx. June 1, 2008 to date)	100.00
Interest (approx. June 1, 2008 to date)	.48
One half of filing fee	25.00
Sub total of tenants' credits	\$661.32
Less deduction agreed to for carpet cleaning	- 75.00
Less deduction agreed to for Hydro	- 75.00
Less deduction agreed to for miscellaneous items	- 60.00
Less amount allowed for missing art work	- 275.00
TOTAL	\$176.32

Conclusion

Thus, tenants' copy of this decision is accompanied by a Monetary Order for \$176.32, enforceable through the Provincial Court of British Columbia, for service on the landlords.

September 26, 2008
