



Dispute Resolution Services

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

DECISION

Dispute Codes: MNSD, MNDC and FF

Introduction

These applications were brought by both the landlord and the tenant.

By application of November 28, 2008, the tenants seek return of the unreturned security portion of the security deposit in double on the grounds that it was not returned within 15 days of the latter of the end of the tenancy or receipt by the landlord of the tenants' forwarding address and they had not agreed to its retention.

By application of December 4, 2008, the landlord seeks a Monetary Order for cleaning and damages at the end of the tenancy.

Both parties seek to recover from the other the filing fee for this proceeding.

Issue(s) to be Decided

The tenant's application requires a decision on whether they are entitled to a Monetary Order for the unreturned portion of the security deposit in double.

The landlord's application requires a decision on whether and how much she is entitled to compensation for on her counter claim.

Background and Evidence of Tenants' Claim

This tenancy began January 1, 2005 and ended on November 1, 2008. Rent was \$875 per month and the landlord held a security deposit of \$437.50 paid on December 3, 2004.

Both parties participated in the move out inspection although it was not recorded on the prescribed form and bears no signatures.

During the hearing, the tenants gave evidence that they had received \$186.39 of the security deposit sent by registered mail on November 10, 2008.

Analysis

Section 38(1) of the *Act* states, that unless the tenants consent otherwise, a landlord must, within 15 days of the latter of the end of the tenancy or receiving the tenant's forwarding address, return the security deposit with interest or apply for dispute resolution to make claim upon it.

Section 38(6) states that, if the landlord does not do so, the landlord must pay the tenant double the amount of the security deposit.

The landlord's application, dated December 4, 2008 is beyond the 15 day limit.

I find that by not returning the security deposit with interest within 15 days of the end of the tenancy, the landlord has failed to comply with section 38(1) of the *Act* and must pay the tenants double the amount of the unreturned portion of the security interest on the initial deposit.

Accordingly, I find that the landlord owes the tenants an amount calculated as follows:

Security deposit	\$437.50
Interest (December 23, 2004 to November 1, 2008 to date)	14.37
Sub total (Tenants' credit)	\$451.87
Less amount returned	- 186.39
Unreturned portion due to tenants	\$265.48
To double unreturned portion	265.48
TOTAL	\$530.96

Background and Evidence of Landlord's Claim

The landlord claims the following amounts for damages, cleaning and repairs and they are the same items provided to the tenants along with partial return of the security deposit:

Cleaning - \$60. The landlord submits a written statement with no amount stated from a person attesting that she spent a total of six hours cleaning the bathroom, windows inside and out, cupboards, closets, floors and fridge and stove. The statement does not include a dollar figure but the landlord claims \$60 and states that to be half what she paid the cleaner. The tenants stated that they had also paid a professional cleaner. On the balance of probabilities, I find that it would not be unusual for some additional cleaning to be required and, given that the landlord asks for only half of her cost, this part of the claim is allowed.

Fire alarm inspection late fee - \$75.11. The rental unit is in a strata building. As the tenants had once found a strata representative in their unit without authorization, the landlord had consented to remove her key. Subsequently, the fire alarm in the unit required inspection and the landlord states that the tenants were contacted twice to arrange to admit the inspector. The tenants state that they attempted unsuccessfully to notify the landlord. In consequence, the inspection was not conducted while the inspector was on site and the landlord was subsequently levied a surcharge of \$75.00 for a later inspection. Given the conflicting evidence of the parties on this issue, I find that they are equally responsible and award the landlord \$37.55 on this claim.

Missing Rug - \$25. The tenants concur that they discarded the old mat and replaced it with their own which they took when they left the rental unit. This claim is allowed.

Locker Key - \$5. The tenants concur that they left their lock on the locker and left no key. The landlord claims \$5 for replacement of the hardware damaged during removal of the lock. As I would find this to be a reasonable charge to cut the lock even if no hardware replacement is required, this part of the claim is allowed.

Light fixture - \$35. The landlord claims for replacement of a light fixture, the globe for which she was unable to locate and which appeared to be bent. The tenants claim the globe was removed to avoid it falling when the light fixture appeared to be separating from its mounting. On examining the landlord's picture of the fixture, I find it appears to be of an age and value that would be fully depreciated. This claim is not allowed.

Door frame trim - \$60. The tenants concede that they accidentally damaged the trim by attempting to open the door while the chain lock was on. While the landlord has not submitted a receipt for this part of the claim, I find this to be a reasonable charge for the materials and labor required to replace the trim.

Thus I find that the landlord is entitled to the following claims:

Cleaning	\$60.00
Alarm inspection late fee	37.55
Missing rug	25.00
Locker key	5.00
Door frame	60.00
TOTAL	\$187.55

Conclusion

Having found merit in both applications, I find that each of the parties should remain responsible for their own filing fee. As I have found that the tenants' claim exceeds that of the landlord, I find that the tenants will be issued with a Monetary Order calculated as follows:

Amount awarded to tenants	\$530.96
Amount awarded to landlord	<u>- 187.55</u>
Amount due to tenants	\$343.41

Thus, the tenant's copy of this decision is accompanied by a Monetary Order for \$433.14, enforceable through the Provincial Court of British Columbia, for service on the landlord.

December 16, 2008

Dispute Resolution Officer