



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

MND, MNDC, MNSD, & FF

Introduction

This hearing dealt with cross applications by the parties. The landlord filed an application seeking a monetary claim related to damage to the rental unit, compensation for loss or damage due to a breach of the tenancy agreement by the tenants and requesting to retain the tenants' security deposit plus interest in partial satisfaction of this claim. The tenants' filed a counter claim seeking a monetary claim for the return of their security deposit plus interest.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues to be Determined

Has the landlord established a monetary claim related to damage to the rental unit and due to a breach of the tenancy agreement or *Act* by the tenants? Does the landlord have a right to retain the tenants' security deposit plus interest?

Background and Evidence

This tenancy began on August 15, 2007 for the monthly rent of \$2,500.00. The tenants paid a security deposit of \$1,250.00 on July 27, 2007. The tenancy was for a fixed term ending effective August 14, 2008. The tenants gave notice to end the tenancy and the tenancy ended effective June 30, 2008. The landlord did not receive a forwarding address for the tenants in writing until March 2009.

The parties gave conflicting evidence about the end of the tenancy. On June 25, 2008 the landlord submitted that he arrived at the rental unit and the tenants were still cleaning. The landlord submits that he arranged for a move out condition inspection to occur on June 28, 2008.

The tenants agreed that the landlord was at the rental unit on June 25, 2008; however, deny that any follow up inspection was arranged. The tenants submitted that they requested the return of their security deposit and the landlord refused on the basis that the tenants had not completed the fixed term lease.

The tenants acknowledged that they did not provide a forwarding address to the landlord at that time and it was not until recently that they realized this was required. The tenants provided their forwarding address in April 2009. The parties exchanged several e-mails during April and May 2009, but were unable to resolve their dispute.

The landlord seeks the following damages, which resulted from the tenants' breach of the tenancy agreement and from damage caused to the rental unit by the tenants:

Carpet cleaning	\$350.00
Cleaning of the rental unit	\$275.00
Filling and touch up paint to holes in walls	\$200.00
Garbage and debris removal	\$100.00
Lawn cutting and grooming	\$175.00
Repairing damage of scratched countertop, broken floor tiles, cracks in glass on balcony, and broken basement door	\$980.00
Advertising for new tenants	\$60.00
Recovery of filling fee paid for this application	\$50.00
Total	\$2,190.00

From the documentary evidence submitted by the landlord, it appears that the rental unit was re-rented effective July 1, 2008. The landlord submitted several documents to support this claim.

The tenants deny any damage to the rental unit or any failure to return the rental unit in a clean and undamaged condition. The tenants also pointed out that the landlord was provided with over a month's notice that they were vacating and the unit was re-rented. The tenants submit that they are entitled to the return of double their security deposit plus interest.

Analysis and Findings

I have carefully considered all the documentary and oral evidence presented to me for this proceeding and I have determined that the landlord's evidence is not reliable and lacks veracity. I do not accept the receipts provided by the landlord in support of his claim for damage to the rental unit. None of the receipts provided were original, consisted of typed written statements without any account numbers, letterhead and in most cases are undated. The alleged receipts do not have any indication that they were actually paid. I cannot rely on these documents as being official.

I also find that the landlord created and submitted a form called *Notice of Final Opportunity to Schedule a Condition Inspection* after the fact, again to strengthen his application. The landlord failed to provide any evidence to support that this form was actually served upon the tenants before the tenancy ended. I find that these document are not reliable and I give them no weight.

Based on the unreliable nature of the landlord's documentary evidence, I find that I can give very little weight to the landlord's oral testimony and I accept the tenants' oral testimony over the oral testimony of the landlord and accept the tenants' version of events.

As a result I deny the landlord's application. I find that the landlord failed to conduct a move in or move out condition inspection of the rental unit and has no evidence to support his claim that the tenants damaged the rental unit.

The landlord also has extinguished any right to retain the tenants' security deposit by failing to conduct these inspections as required by sections 23, 24, 35, and 36 of the *Act*.

I accept the tenants' application. I accept that the tenants provided the landlord with a forwarding address in writing as of March 31, 2009. However, I do not accept that the tenants are entitled to the return of double their security deposit. Although the landlord had extinguished his right to retain the security deposit, the landlord did file an application for dispute resolution to retain it as required by section 38(1) of the *Act* which states:

- 38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the landlord has complied with section 38(1) of the *Act*, I find that the tenants are entitled to the return of their security deposit plus interest only. I also Order that the landlord reimburse the tenants' \$50.00 in recovery of the filling fee paid by the tenants for their application.

I find that the tenants have established a monetary claim for the sum of **\$1,317.44**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

I have denied the landlord's application and it is dismissed. I have granted the tenants' application in part and I have Ordered the landlord to return the tenants' their security deposit plus interest.

Dated June 17, 2009.

Dispute Resolution Officer