



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, OLC, MND, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was held in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for return of double the deposit paid and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

This hearing was also scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damages, unpaid rent, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

At the start of the hearing the tenants testified that they have received return of the original deposit paid in the sum of \$1,700.00, by way of a cheque issued on September 22, 2009. The tenants confirmed that the deposit of \$1,750.00 indicated in the tenancy agreement is incorrect, that the amount paid was \$1,700.00. The tenants testified that they are proceeding with their claim for double the deposit paid.

At the start of the hearing I determined that the claim for compensation related to hearing costs was dismissed without leave to reapply as the tenants did not amend their Application for Dispute Resolution to include this additional claim.

During the hearing the landlord raised the issue of email evidence he submitted indicating that the tenants were willing to withdraw their claim. The tenants have not submitted any documentation indicating that they did not wish to proceed; therefore, the hearing was conducted based upon the Applications before me.

Issue(s) to be Decided

Are the tenants entitled to return of double the deposit paid to the landlord?

Must the landlord be ordered to comply with the Act?

Is the landlord entitled to compensation for damage to the rental unit and unpaid rent?

May the landlord retain the deposit?

Is the landlord entitled to compensation for damage or loss?

Is either party entitled to return of filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2009; rent was \$3,500.00 due on the first day of each month. The tenancy terminated on August 31, 2009.

The tenants testified that on August 31, 2009 they provided the landlord with their forwarding address, in writing, on the move-out condition inspection report. The tenants stated that they did not receive return of their deposit until they received a cheque issued on September 22, 2009.

During the hearing both parties agreed that on August 31, 2009 a move-out condition inspection was completed with the tenants and the landlord's agent. The condition inspection submitted as evidence indicates "no damages found all clean and in good order."

The landlord confirmed that he received the tenant's forwarding address on two occasions; first via the move-out condition inspection completed on August 31, 2009 and then a second address submitted in writing via email. The landlord stated he did not know which address to use for return of the deposit.

The landlord submitted an application for dispute resolution on December 23, 2009; claiming against the deposit paid as follows:

Unpaid May and June 2009 rent	1,200.00
NSF fee	25.00
Pest control	178.50
Clean up costs	651.00
Future pool repair costs	Not submitted
	2,196.52

The landlord stated that the tenants failed to pay May rent in the sum of \$700.00. During the hearing the parties each acknowledged emails dated May 1 and May 25, 2009 from the landlord to the tenants confirming a rent reduction of \$700.00 for May, 2009. The landlord stated that at this point he wishes to rescind that offer.

The landlord testified that the tenants failed to pay \$500.00 owed for June rent. The tenants referenced an email from the landlord dated June 3, 2009 indicating that rent for June would be \$3,200.00 for that month as the pool was malfunctioning. The tenants referenced another email from the landlord dated July 9, 2009 asking the landlord if they were required to pay more than the \$3,000.00 that they had submitted for June rent. The landlord replied on July 10 via email stating that "was fair enough."

The landlord testified that the tenants failed to return the keys to the rental unit and that on September 21, 2009 he had the locks replaced. The landlord's agent testified that when the move out condition inspection was completed the tenants refused to return the keys until the deposit was provided to them. The landlord stated that as a result his home was not secure and could be accessed by the tenants.

The tenants stated that they returned the keys on August 31, 2009. The tenants referenced an email sent by the landlord on September 14, 2009, stating that a key to a side door was missing. The tenants stated that they did not realize they still had a key and that they quickly responded and returned the key and broom they had inadvertently taken. The tenants stated that the landlord's delay in changing the locks fails to support his testimony that he was concerned about the security of his home.

The landlord provided evidence of pest control services rendered on July 10, 2009. The landlord stated that the tenants allowed pests into the home because screens were left off of the windows and that they should be responsible for the pest control costs.

The tenants testified that there were mice in the ceiling of the kitchen and that they contacted the landlord on July 7, 2009 to report the problem. This email communication was provided as evidence by the landlord. The tenants testified that the pest control employee who came to the home stated he had provided services to that residence in

the past. The landlord stated that he had not hired pest control since he purchased the home in December 2008.

The landlord has claimed cleaning costs related to the pool, the pool cover, removal of mud and debris from the pool area, patio, front walkway of the house and removal of dead plants. The tenants pointed to the signed move out condition inspection which indicates that the house was clean and in good order. The landlord stated that the report did not reference the outside cleaning that was required. The landlord submitted a hand-written receipt for cleaning costs; the tenants questioned the legitimacy of this receipt.

The landlord's application indicates that he is claiming future costs for repair and mechanical damages to the pool. The landlord stated he included this item on his application in order to provide a record of his intention to claim compensation. The landlord has not provided any evidence or costs related to these items.

Analysis

I find that the tenants are entitled to return of double the deposit paid. Section 38 of the Act requires a landlord to return the deposit to a tenant within fifteen days of receiving a written forwarding address or the end of the tenancy, whichever is later. This tenancy terminated on August 31, 2009 and the landlord was provided with a forwarding address at that time. On September 22, 2009 the landlord issued a cheque, returning the deposit to the tenants. The landlord did not return the deposit paid within the required fifteen day time-frame and did not apply for dispute resolution until December 21, 2009; which is beyond the required fifteen day time-frame.

I reject the landlord's contention that he was confused as to which address he should use. The move out condition inspection report forwarding address provided by the tenants is the same address sent to the landlord via email on August 28, 2009 and provided the landlord with the necessary information as required the Act.

As the landlord has returned \$1,700.00 by way of cheque dated September 22, 2009 I find that he must now provide a further payment of \$1,700.00 as double the deposit paid.

I find that the landlord did provide the tenants with written agreement to rent reductions for the months of May and June 2009. I have rejected the landlord's desire to now rescind the offer of rent reduction. Those offers were made in writing by the landlord, accepted by the tenants and they stand. Therefore, the claim for unpaid rent for May and June, 2009, is dismissed without leave to reapply.

In relation to the return of the keys and the cost of lock replacement, I find that, on the balance of probabilities, the tenants did return keys at the time the move out condition inspection was completed. I also base this decision upon the landlord's email sent at

11:35 a.m. on September 14, 2009, in which he indicates that he had received only one of three keys to a side door. This email does not mention any other missing key or concern for the security of the home and indicates that at least some keys had been previously returned. Therefore, the claim for lock replacement is dismissed without leave to reapply.

During the hearing I dismissed the landlord's claim for NSF fees as the tenancy agreement signed between the parties does not include a term allowing fees to be levied.

I dismiss without leave to reapply the landlord's claim for pest control costs. I find that the email sent by the tenants on July 7, 2009, demonstrates an expected response by tenants to the presence of rodents in the rental unit. I find that the landlord acted promptly to the concern and, as required by the Act, mitigated any potential loss by this quick response.

I do not find that the tenants are responsible for rodents entering the rental unit as there is no evidence before me that the mice entered the home through windows. I also base this decision on the testimony of the tenants that the pest control services had been provided at this home in the past. It is possible that this service occurred prior to the landlord purchasing the home and that mice had not been previously eliminated.

I dismiss without leave to reapply the landlord's claim for cleaning costs. The move out condition inspection is meant to provide the parties with an accurate record of the condition of the rental unit at the end of the tenancy. It is not acceptable for the landlord to complete the report, have the tenants sign agreeing to the condition of the home and to then claim for damages. The deficiencies claimed by the landlord were not pointed out to the tenants at the time the move out condition inspection was completed and, if they had been, the tenants could have been provided an opportunity to respond.

The only notation made on the move out condition inspection in relation to the pool is that the cover is "toast" and that a light requires replacement. The move in condition inspection report does not reference the condition of the pool cover or lights. The landlord has not made a claim for pool cover costs. I find that the move out condition inspection completed on August 31, 2009 is an accurate reflection of the state of the rental property and the pool.

I find that the landlord's application does not have merit, and that the landlord is not entitled to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the tenant's application has merit, and that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have has established a monetary claim, in the amount of \$1,750.00, which is comprised of the remaining amount of double the deposit and \$50.00 in compensation for the filing fee paid by the tenants for this Application for Dispute Resolution.

The landlord's claim for compensation is dismissed without leave to reapply.

Based on these determinations I grant the tenants a monetary Order in the sum of \$1,750.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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

Dated: January 18, 2010.

Dispute Resolution Officer