

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, filed by each party.

The Tenant filed her Application to request the return of her security deposit and interest, and to recover the filing fee for the Application.

The Landlords filed their Application, requesting monetary orders for damage to the rental unit, for compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Tenant entitled to the return of her security deposit?

Are the Landlords entitled to monetary compensation from the Tenant for damages to the unit?

Background and Evidence

This tenancy began in October of 2006, with the Tenant paying the Landlord a security deposit of \$1,700.00. The monthly rent was agreed to be \$1,700.00.

The tenancy ended on October 31, 2009. On November 2, 2009, the parties met at the rental unit to do an outgoing condition walkthrough. The Landlords did not perform incoming or outgoing condition inspection reports in accordance with the Act.

At the time of the walkthrough, the Landlords noticed cigarette burns on the exterior vinyl covered deck. The Tenant had also not returned a parking pass and there were a few items left behind in the rental unit that required removal.

At the end of the walkthrough, the Tenant signed a “declaration” which states:

“I, [Tenant’s name], understand that there will be deductions from my damage deposit to remedy a missing parking pass, burns in the vinyl deck, removal of any items left behind and any other miscellaneous items.” [Reproduced as written.]

Both parties agree there were cigarette burns on the vinyl deck. The parties differ on the extent and number of burns. There were no photographs of the deck submitted in evidence.

On or about November 3, 2009, the Landlords wrote to the Tenant and explained they had found someone who would repair the deck for \$1,469.00. The Landlords credited the Tenant for the interest on the deposit and then deducted \$1,569.00 for the repair and parking pass, and returned \$183.88 to the Tenant. The Tenant testified she had not cashed the cheque at the time of the hearing. The appearing Landlord testified he received the Tenant’s forwarding address in November of 2009. The Tenant was unhappy with the amount the Landlords attempted to deduct from the security deposit and filed her claim on or about December 23, 2009.

The Tenant testified she did not smoke on the deck herself, but she had roommates and they may have smoked or allowed guests to smoke on the deck.

In their Application, the Landlords have claimed \$4,000.00 for the complete replacement of the vinyl deck. The Landlords entered into evidence an estimate of \$3,475.00 from a contractor. There is also a letter from the Strata Council where the rental unit is located explaining to the Landlords that the vinyl deck has to be replaced, “... to ensure the integrity of the deck structure underneath...”. The Strata estimates that the cost will be between \$2,500.00 and \$3,500.00. It also states in the letter that the Strata would do the work and then seek compensation from the Landlords for the costs.

The appearing Landlord testified that the building where the rental unit and deck are located was built in 1993. He testified that he believes the deck has a further life expectancy of 30 years. He testified the unit is currently for sale and alleged that the cigarette burn damage to the deck may be detracting buyers from purchasing the rental unit.

The Landlords and the Tenant discussed rolling a new surface on the deck or simply repairing the damaged spots on the deck, however, they could come to no agreement on the integrity or costs of this type of repair.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that both parties have breached the Act.

The Landlords breached the Act by requiring a full month of rent for the security deposit when they are allowed only half of one month of rent for a deposit, by failing to do incoming and outgoing condition inspection reports in accordance with the Act, and by failing to return or claim against the security deposit within 15 days of the end of the tenancy or receipt of the Tenant's forwarding address. I find these breaches have caused the Tenant to suffer a loss.

In regard to the Tenant's monetary claim, pursuant to section 38 of the Act I must order the Landlords to pay the Tenant double the security deposit. Therefore, I order the Landlords to pay the Tenant the sum of \$3,502.90, comprised of double the security deposit (2 x \$1,700.00), the interest on the original amount held of \$52.90, and the \$50.00 filing fee for the claim, subject to the offset below. As the Tenant did not cash the cheque provided to her earlier by the Landlords, I have not included this amount in this calculation. The Tenant is ordered to destroy or return the uncashed cheque to the Landlords.

I find the Tenant has breached the Act by damaging and failing to make repairs to the vinyl deck or return the parking pass to the Landlords. I find the Landlords had insufficient evidence to show the cost of removing items left behind by the Tenant. I also find that the Landlords had insufficient evidence to show the cigarette burns on the deck have caused any delay in the sale of the property. Furthermore, the Landlords did not mitigate, as required under the Act, any alleged loss of sale by repairing the deck themselves.

Nevertheless, I do find that the Tenant's breaches have caused the Landlords to suffer a loss. I find that either her roommates, or guests allowed on the rental unit property, have extinguished cigarettes on the deck causing damage to the vinyl surface. Under the policy guideline 37 to the Act, I find that the useful life expectancy of the vinyl deck is 20 years. I find that the Landlords have insufficient evidence to prove the useful life expectancy of this vinyl deck goes beyond this time.

Based on the 20 year life expectancy and the 16 years the deck has been used, I find the Tenant is liable to the Landlord for 20% of the cost. Based on the estimate to repair of \$3,500.00, I find that the Tenant should compensate the Landlords in the amount of \$700.00 for the costs of the repair. I further order the Tenant to pay the Landlords \$100.00 for the lost parking pass and \$50.00 for their filing fee. Therefore, the Tenant must pay to the Landlords \$850.00 in compensation, subject to the offset below.

Having awarded \$850.00 to the Landlords and \$3,502.90 to the Tenant, I apply section 72 of the Act to offset these amounts and I grant the Tenant an order against the Landlords in the amount of **\$2,652.90**. I issue the Tenant a monetary order in those terms which must be served on the Landlords as soon as possible. This order is enforceable in the Provincial Court of British Columbia (Small Claims division).

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: May 21, 2010.

Dispute Resolution Officer