

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Issue(s) to be Decided

- Is the Tenant entitled to return of the security deposit in accordance with the provisions of Section 38 of the Act?
- Is the Tenant entitled to compensation under the provisions of Sections 7 and 67 of the Act?

Background and Evidence

Facts on which the parties agree:

The tenancy started on December 1, 2008, and ended on June 27, 2009, by mutual agreement. Originally, the tenancy was a 6 month term lease, and thereafter continued on a month-to-month basis. The Tenants paid a security deposit of \$650.00 on December 1, 2008.

Monthly rent at the end of the tenancy was \$1,300.00, due on the first day of each month. The Tenants paid rent in full for the month of June, 2009.

The Tenants provided the Landlord with written notice of their forwarding address on June 26, 2009. On July 16, 2009, the Landlord mailed the Tenants a partial refund of the security deposit in the amount of \$500.00.

The Tenants gave the following testimony:

The Tenants are seeking non-pecuniary damages in the amount of \$3,300.00 for distress associated with multiple displacements throughout the tenancy, for which the Tenants were not compensated:

- The Tenants had to move out of the rental unit at the beginning of the tenancy for a few days while the rental unit was fumigated for bugs and insects;
- On January 4, 2009, the sump pump failed, causing a flood in the rental unit. Many of the Tenants' personal belongings were destroyed in the flood. The Tenants arranged for alternate accommodation until the rental unit was ready for occupancy again in March, 2009.
- An alarm system was installed to alert the Tenants when water levels exceeded a specific limit. The alarm was overly sensitive and would sound when the Tenants did a load of washing, or used the shower or tub. The sound frightened the Tenant's two year old son. The Tenants advised the Landlords about the regular false alarms, but the Landlords did nothing to address the problem.
- On June 19, 2009, the Landlords advised the Tenants that they would be displaced again, due to more suspected water damage. The Landlords asked the Tenants to move all of their belongings into the two bedrooms by June 21, 2009, and advised the Tenants that work would begin on June 22, 2009. The Tenants moved out of the rental unit on June 21, 2009. The Landlords told the Tenants that the work would be completed on June 26, 2009. Work did not commence until June 25, 2009. The Tenants drafted a mutual end of tenancy agreement, which the parties signed on June 26, 2009.

The Tenants are seeking compensation for their moving expenses in the amount of \$756.62. The Tenants provided copies of bank statements in support of their claim for moving expenses.

The Tenants are seeking reimbursement in the amount of \$390.00 for rent paid while not residing in the rental unit from June 21, 2009 to June 30, 2009. The Tenants stated that they could not live in the rental unit while the repairs to the floors were taking place because they would have no use of the bathroom or kitchen. Furthermore, their furniture was piled up in the bedrooms, rendering them unuseable.

The Tenants are seeking double the amount of the security deposit, pursuant to the provisions of Section 38(6) of the Act. The Tenants testified that they did not cash the \$500.00 cheque the Landlord provided as a partial refund of their security deposit, nor did they return the uncashed cheque to the Landlords.

The Landlords gave the following testimony:

The Landlords dispute the Tenants' claim for non-pecuniary damages. The Landlords stated that the Landlords were not negligent in causing the flood. Furthermore, the Landlords stated that the Tenants were compensated for the loss of use of the rental unit while the Tenants were displaced. The Landlords stated that the initial flood was caused by the Tenants' misuse of the sump pump, and that the Tenants waited two weeks before notifying the Landlords of the flood. The Landlords submitted that the Tenants have not produced any medical documentation to support their claim for distress.

The Landlords submitted that the Tenants are not entitled to moving expenses. The Landlords stated that the Tenants are claiming for moving their belongings 355 kilometers away from the rental unit. Furthermore, the Landlord stated that the Tenants

are claiming for gas expenses incurred in July and August, 2009, when the tenancy ended in June, 2009.

The Landlords testified that the Tenants moved out of the rental unit on June 27, 2009. The Landlords agreed that the Tenants are entitled to recover rent for the period of June 28 to June 20, 2009, only, in the amount of \$130.00 ($\$1,300/30 \times 3$).

The Landlords stated that the Tenants advised that the forwarding address they provided was a temporary forwarding address. The Landlords testified that they waited to send the partial refund until they received the permanent address. The Landlords testified that when the Tenants phoned and asked the Landlords to send the cheque to the temporary forwarding address, the Landlords did so. The Landlords testified that they performed an inspection of the rental unit after the Tenants moved out, and that they withheld \$150.00 of the security deposit for damage to the suite. The Landlords submitted that the Tenants did not dispute the amount the Landlords kept, and therefore the Landlords believed the Tenants accepted it.

Analysis

The Tenants provided insufficient evidence to support their claim for compensation surrounding the few days at the beginning of the tenancy when they were required to vacate the rental unit for fumigation, or the time they had to vacate the premises due to the January flood. For example, they did not provide specifics or documentary evidence with respect to how many days they were gone or how much they spent in hotel bills. There was no evidence with respect to what amount, if any, the Tenants had been compensated by the Landlords.

Likewise, the Tenants failed to provide sufficient evidence to support their claim for compensation surrounding their loss of peaceful enjoyment because of the sump alarm. For example, they did not provide testimony with respect to the number of occurrences

when the alarm would sound, or copies of written communications with the Landlords advising of the problem and asking the Landlords to correct it.

The Tenants vacated the rental unit pursuant to a mutual end of tenancy agreement and are therefore not entitled to recover moving expenses from the Landlords.

Based on the testimony of both parties, I find that the Tenants had to vacate the rental unit on June 21, 2009, and that they were not compensated by the Landlords. The parties entered into a mutual end of tenancy agreement effective June 27, 2009, and therefore the Tenants are not entitled to compensation for June 28 to June 30, 2009, inclusive. Therefore, I allow the Tenants' application for compensation for loss of use of the rental unit for the period of June 21, 2009 to June 27, 2009, in the amount of \$303.33 ($\$1,300.00/30 \times 7$ days).

A security deposit is held in trust by a landlord, to be administered in accordance with the provisions of Section 38 of the Act.

Section 38 of the Act states:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy]*

inspection] or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

(emphasis added)

The Tenants provided the Landlords with written notification of their forwarding address on June 26, 2009. The tenancy ended on June 27, 2009. The Tenants did not give the Landlords written permission to retain any of the security deposit. There was no evidence of any Condition Inspection Report prepared at the beginning or the end of the tenancy. The Landlord did not return the full deposit, or make application against the deposit, within the time frame provided in Section 38(1) of the Act. Therefore, in accordance with the provisions of Section 38(6) of the Act, I find that the Tenants are entitled to double the security deposit plus accrued interest on the original deposit amount. No interest accrued on security deposits for the 2009 or 2010 calendar year. Interest in the amount of \$.83 accrued for the 2008 calendar year. I note that the Tenants did not negotiate the Landlord's cheque in the amount of \$500.00. The cheque is now stale dated.

The Tenants have been partially successful in their application, and are entitled to recover the cost of the filing fee from the Landlords.

The Tenants have established their monetary award, as follows:

Compensation for loss of use of the rental unit from June 21 to June 27, 2009	\$303.33
Double the security deposit plus interest on the original deposit	\$1,300.83
Recovery of the filing fee	<u>\$50.00</u>
TOTAL MONETARY AWARD	\$1,654.16

Conclusion

I hereby grant the Tenants a Monetary Order against the Landlords in the amount of \$1,654.16 against the Landlords. This Order must be served on the Landlords and may be filed in the Provincial Court of British Columbia (Small Claims) 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.

June 16, 2010

Date of Decision
