

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement; return of all or part of the pet damage deposit and/or security deposit; and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenants are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from January 1 to December 31, 2006. Thereafter, tenancy has continued on a month-to-month basis until February 28, 2010. By the end of tenancy, rent of \$1,220.00 and parking of \$70.00 were jointly payable in advance on the first day of each month. A security deposit of \$592.50 was collected on or about January 1, 2006. A pet damage deposit of \$592.50 was collected on or about February 1, 2006. While the parties agree that a move-in condition inspection and report were completed at the outset of tenancy, a copy of the report is not in evidence.

While the parties agree that the tenants were not living in the unit after February 28, 2010, the unit keys were not returned to the landlord until March 3, 2010. When the landlord entered the unit on March 3, 2010, he found that the carpets had not been professionally cleaned, that general cleaning was still required, and that certain of the tenants' belongings had been left behind. In any event, there was no methodical move-out condition inspection or formal report completed by the parties, and new renters later took possession of the unit on March 7, 2010.

By letter dated March 12, 2010, the landlord informed the tenants that the security deposit, pet damage deposit plus interest totaled \$1,226.48. In his letter the landlord also informed the tenants of deductions he had made from the above amount totaling \$749.89, and he attached a cheque for the balance of \$476.59 (\$1,226.48 - \$749.89).

In their application for dispute resolution the tenants seek repayment of the \$749.89 withheld, as they consider that “proper procedure” was not followed by the landlord.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Analysis

The full text of the Act, regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca/

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a partial resolution. Specifically, it was agreed as follows:

- that by the end of tenancy, the tenants' security deposit, pet damage deposit plus interest amounted to \$1,226.48 (\$592.50 & \$592.50 & \$41.48);
- that the landlord will withhold from the above total the following amounts:
 - i) \$131.25 *carpet cleaning*
 - ii) \$52.08 *cleaning blinds*
 - iii) \$75.00 *removing items left behind*
 - iv) \$3.41 *replacing light bulbs*
 - v) \$41.48 *interest accrued on the two deposits combined*

Sub-total: \$303.22

Aspects of the dispute which remain unsettled, and my findings around each, are set out below.

\$357.00: *cleaning*.

Section 35 of the Act addresses **Condition inspection: end of tenancy**, and provides in part that...

- the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection
- the landlord must complete a condition inspection report in accordance with the regulations, and
- both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**, and provides in part, that the right of the landlord to claim against the security deposit or pet damage deposit is extinguished if...

- the landlord does not offer the tenant at least 2 opportunities, as prescribed, for the inspection
- having offered at least 2 opportunities for inspection, the landlord does not participate on either occasion
- having made an inspection with the tenant, the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Following careful consideration of the documentary evidence and testimony of the parties, I find that the landlord did not offer at least 2 opportunities for

inspection, as prescribed, and did not complete the condition inspection report. Accordingly, I find that the tenants are entitled to repayment of the full amount withheld in this regard.

\$127.74: *overholding (3 days @ \$42.58/day).*

I find that the tenants had effectively vacated the unit by February 28, 2010, even while the keys to the unit were not returned to the landlord until March 3, 2010. The parties agree that on March 3, 2010, certain belongings discarded by the tenants still remained in the unit and were subsequently removed by the landlord.

The landlord presented no conclusive evidence that possession of the unit by new renters was delayed after February 28, 2010 as a result of the need to remove discarded belongings, or by the need for additional cleaning in the unit. Further, I note that the landlord did not proceed to change the locks on the unit when the tenants failed to return the unit keys to him on February 28, 2010. Additionally, the landlord testified the move-in date for the new renters on March 7, 2010 was in some manner associated with the availability of a moving truck.

In view of all the foregoing, I find that the landlord has not met the burden of proving entitlement to compensation for "overholding." Accordingly, I find that the tenants are entitled to repayment of the full amount withheld in this regard.

\$50.00: *filing fee*. As the tenants have achieved some success in their application, I find they are entitled to recover the full filing fee.

In sum, I find that the tenants have established a claim of **\$837.96**, as follows:

\$303.22: *amount agreed to by the parties during the hearing*

\$357.00: *cleaning*

\$127.74: *overholding*

\$50.00: *filing fee*

As the landlord has already made payment of \$476.59, the balance owed to the tenants is calculated as **\$361.37** (\$837.96 - \$476.59).

Conclusion

I order the landlord to **FORTHWITH** make payment to the tenants in the full amount of **\$361.37**, and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants for this amount. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: July 14, 2010

Dispute Resolution Officer