

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This hearing dealt with two applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for the double return of the security deposit / and recovery of the filing fee.

The landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, and despite scheduling of the hearing in response to applications from both parties, neither tenant appeared.

Issues to be decided

- Whether either party is entitled to any of the above under the Act

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on February 15, 2010. Rent in the amount of \$1,075.00 was payable in advance on the first day of each month. A security deposit of \$537.50 was collected on or about February 13, 2010. There was no formal move-in condition inspection or report completed by the parties.

The landlord testified that at some point the tenants gave verbal notice of their intent to end the tenancy effective March 31, 2010. The landlord does not dispute the claim in the tenants' documentary submission that they informed her in writing of their forwarding address at the end of the tenancy. There was no move-out condition inspection or report completed by the parties at the end of tenancy. Despite the application from the tenants for the double return of their security deposit, the landlord

testified that tenant “MKCJ” gave her clear verbal consent to retain the security deposit at the end of tenancy. It is understood that this verbal authorization was given in order to offset costs incurred by the landlord for cleaning required in the unit as a result of smoking inside the unit and the tenants’ possession of a pet. The landlord testified that smoking occurred in the unit despite her instruction to the tenants that smoking was not permitted. Further, the landlord testified that the tenants did not inform her at the outset of the tenancy that they had a pet.

As previously noted, further to recovery of the filing fee, in her original application the landlord sought a monetary order as compensation for damage to the unit, site or property and retention of the security deposit. At the time of her application she estimated that costs for cleaning would amount to about \$700.00. Thereafter, a receipt submitted by the landlord showed proof of payment for steam cleaning and sanitization (smoke smell) of carpets for \$210.00. Further, the landlord claimed compensation for time she spent cleaning the unit in the amount of \$190.00 (9.5 hrs. x \$20.00/hr).

During the hearing, the landlord testified that as a result of cleaning that was required in the unit, she was unable to find new renters until May 1, 2010. Accordingly, she also requested compensation for loss of rental income for April 2010 of \$1,075.00.

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/

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, details of my findings are set out below.

Landlord:

\$210.00*: *steam cleaning and sanitization of carpets.* Based on the documentary evidence and the affirmed / undisputed testimony of the

landlord, I find the landlord has established entitlement to the full amount claimed.

\$190.00*: *time spent cleaning by the landlord*. Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find the landlord has established entitlement to the full amount claimed.

\$1,075.00: *loss of rental income for April 2010*. In the absence of insufficient evidence around how and when notice to end tenancy was given by the tenants, as well as insufficient evidence of any efforts made by the landlord to mitigate a loss of rental income, and the absence of either a move-in or move-out condition inspection / report, and the absence of an amended application for dispute resolution by the landlord, this aspect of the landlord's application is hereby dismissed.

Sub-total: \$400.00 (\$210.00 & \$190.00)

Tenants:

Section 38 of the Act provides, in part, that the landlord must repay to the tenants double the amount of the security deposit if the landlord does not repay the original amount to the tenants within i) 15 days after the end of tenancy, or within ii) 15 days after the date the landlord receives the tenants' forwarding address in writing, or in the alternative iii) make application for dispute resolution within 15 days of the later of either of the foregoing.

As previously stated, the landlord's affirmed / undisputed testimony is that tenant "MKCJ" gave unequivocal verbal authorization to the landlord to retain the security deposit in order to offset cleaning costs. The evidence as set out above provides that these costs totaled \$400.00.

There is no dispute that the landlord received the tenants' forwarding address at the end of tenancy on March 31, 2010, that the landlord has not

presently returned any portion of the tenants' security deposit, and that the landlord's application for dispute resolution was filed outside the subject 15 day period on May 12, 2010.

In the result, I order the landlord to pay the tenants double the amount of the security deposit remaining after deductions for cleaning. I find that as the amount remaining after deductions is \$137.50 (\$537.50 - \$400.00), the amount owed to the tenants is \$275.00 (2 x \$137.50).

As both parties have achieved some success in their applications, their respective applications to recover the filing fee are hereby dismissed.

Conclusion

I hereby order the landlord to withhold \$400.00 from the tenants' security deposit.

I hereby order the landlord to FORTHWITH make payment to the tenants in the amount of \$275.00 and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenants to that effect. 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: August 5, 2010

Dispute Resolution Officer