

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with 2 applications: i) by the tenants for a monetary order as compensation for emergency repairs / compensation for damage or loss under the Act, regulation or tenancy agreement / the double return of the security deposit / and recovery of the filing fee; ii) by the landlords for a monetary order as compensation for damage to the unit / retention of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether either party is entitled to any of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from January 1 to March 31, 2010. Thereafter, by way of mutual agreement, tenancy ended effective April 30, 2010. Monthly rent was \$2,700.00, and a security deposit of \$1,350.00 was collected on December 9, 2009. There was no move-in condition inspection and report, or move-out condition inspection and report completed by the parties.

The tenants undertook to inform the landlords of their forwarding address and request the return of their security deposit by way of e-mails dated April 29 and May 19, 2010, as well as by way of registered mail which was successfully delivered on June 4, 2010. After determining that the repayment of their security deposit was not forthcoming, the tenants filed an application for dispute resolution on July 22, 2010. Subsequently, the landlords filed an application for dispute resolution on August 20, 2010.

In addition to seeking reimbursement of their filing fee, and the double return of their security deposit, the tenants seek reimbursement of \$95.00 for the cost of service provided by an electrician to relight the furnace. There is conflicting testimony associated with the nature of communications between the parties in regard to this matter: whether service required for the furnace constituted an emergency repair, what method of communication was anticipated or expected between the parties (cell phone, home phone, e-mail), what understandings / expectations the respective parties had in relation to who would do what, and who said what to whom.

For the landlords' part, further to the reimbursement of the filing fee, the landlords seek to retain the full security deposit, in addition to obtaining compensation for cleaning and repairs to damage alleged to be the result of this tenancy. The landlords' application specifically cites repairs required of the stainless steel fridge and the hardwood floor. The landlord testified that the unit was rented to new tenants immediately following the end of the subject tenancy.

Evidence submitted by the parties includes, but is not necessarily limited to, photographs, photocopies of photographs, correspondence and miscellaneous e-mail exchanges between the parties.

Analysis

While I have turned my mind to all aspects of the evidence presented, not all particulars of the arguments or submissions are reproduced here.

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/

Pertinent to the specific circumstances of this dispute, the particular attention of the parties is drawn to the following sections of the Act:

Section 23: Condition inspection: start of tenancy or new pet.

Section 24: Consequences for tenant and landlord if report requirements not met.

Section 35: **Condition inspection: end of tenancy.**

Section 36: **Consequences for tenant and landlord if report requirements not met.**

Section 32: **Landlord and tenant obligations to repair and maintain.**

Section 33: **Emergency repairs.**

Section 37: **Leaving the rental unit at the end of a tenancy.**

Further to the above, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part as follows:

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.

Additionally, section 38(6) of the Act states:

38(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.

TENANTS' CLAIM

Based on the documentary evidence and testimony of the parties, I find that even if I accept that the landlord was not informed of the tenants' forwarding address until June 4, 2010, when the registered mail was delivered, clearly the landlord did not either return the security deposit, or file an application for dispute resolution within the 15 day time period required in the above legislation. Accordingly, I find that the tenants have established entitlement to the double return of the security deposit in the amount of **\$2,700.00*** (2 x \$1,350.00).

As to the cost incurred for electrical service performed on the furnace, I make no finding in regard to whether or not the service could be considered an "emergency repair." In the absence of more conclusive evidence related to the nature of communications between the parties in regard to this matter, I find that the tenants have established entitlement limited to **\$47.50***, which is half the amount claimed (\$95.00 ÷ 2).

As the tenants have been successful in their application, I find they are also entitled to recover the **\$50.00*** filing fee.

Total claim allowed: **\$2,797.50** (\$2,700.00 + \$47.50 + \$50.00).

LANDLORDS' CLAIM

Based on the documentary evidence and testimony of the parties, I find that there was neither a move-in, nor a move-out condition inspection and report completed by the parties. Sections 23(3) and 35(2) of the Act provide that the "landlord must offer the tenant at least 2 opportunities, as prescribed, for the [move-in and move-out] inspection." Sections 24 and 36 of the Act state, in part, that the right of the landlord to claim against the security deposit is extinguished if the landlord does not comply with

the requirement to offer at least 2 opportunities to complete the respective condition inspection reports.

Further to the absence of any receipts in support of costs claimed by the landlords for cleaning, repairs or replacement(s), as the landlords have not complied with the above statutory provisions concerning move-in and move-out condition inspections and reports, the aspects of the landlords' application concerning retention of the security deposit, as well as additional compensation, is hereby dismissed.

As the landlords have not been successful in this application, the aspect of the application concerning recovery of the \$100.00 filing fee is also hereby dismissed.

Conclusion

Following from the above, I hereby order the landlords to FORTHWITH make payment to the tenants in the amount of **\$2,797.50**, and pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants for that amount. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is hereby dismissed.

DATE: December 13, 2010

Dispute Resolution Officer