



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNDC
MNSD FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant filed seeking a Monetary Order for the return of double his security deposit and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Hearing letter however he did not receive a copy of the Landlord's application for dispute resolution.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, served personally by the Tenant. The Landlord confirmed receipt of the Tenant's hearing package and evidence.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant breach the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to monetary compensation as a result of that breach?
3. Has the Landlord breach the Act, regulation or tenancy agreement?

4. If so, has the Tenant proven entitlement to monetary compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a verbal tenancy agreement. Rent was payable on the first of each month in the amount of \$975.00 and a security deposit of \$487.50 was paid on January 1, 2008. No move-in or move-out inspection reports were completed in the presence of the Tenant.

The Tenant testified that his tenancy agreement began on January 1, 2008 when his roommate occupied the basement suite and paid the security deposit. He moved in shortly afterwards and paid his half of the security deposit to his roommate and they shared the monthly rent equally. His roommate moved out of the rental unit October 1, 2009 and was refunded half of the security deposit by the Landlord. The Tenant had to pay the Landlord the additional half of security deposit in order to keep occupying the rental unit. On November 29, 2009 he had a second roommate move into the basement suite.

The Tenant stated that he provided the Landlords with verbal notice that he would be vacating the rental unit July 15, 2010. Initially the Landlords refused to accept his notice in the middle of the month; however the parties later agreed to mutually end the tenancy on July 15, 2010. The Tenant vacated the unit as per the agreement and provided the Landlords with his forwarding address in writing on July 16, 2010. His roommate vacated the unit prior to July 15, 2010 and he dealt directly with her for the return of her portion of the security deposit as they agreed he would deal with the Landlords for the return of the full deposit. In the absence of inspection reports the Tenant is seeking the return of double his security deposit plus interest.

The Landlords testified that they thought their son had provided documentary evidence in support of their claim and after checking with him they determined that no evidence was provided to the *Residential Tenancy Branch*.

The Landlords stated the Tenant's tenancy did not begin in January 2008 as he occupied the unit later. There was no written agreement between the parties and they returned the first roommates security deposit on December 6, 2009 in the amount of \$193.75. They withheld \$50.00 from her deposit as they noticed there was some damage in the bedroom she occupied.

They confirmed that they initially did not want to accept the Tenant's notice to end tenancy and later came to a mutual agreement to end the tenancy July 15, 2010. They completed a walkthrough of the unit on July 14, 2010 and found the kitchen needed additional cleaning. They lived directly above the basement suite and advised the Tenant to contact them once he had an opportunity to clean the unit properly. They attended on three occasions before the unit was finally cleaned properly. They are of the opinion that they did conduct inspections however they confirm they did not complete the written report in the presence of the Tenant.

The Landlords are seeking compensation for damages caused to the bathroom walls, baseboards, and laminate floor. They state that during the course of the tenancy the Tenant requested to use the toilet plunger as their toilet had plugged and the Landlords had been in the bathroom to provide the plunger and did not see any water damage. The Landlords stated that there was water damage up to about 6 inches up the drywall around the toilet and the baseboards were ruined. They also claim the laminate flooring suffered water damage and had to be replaced. The Landlords are seeking \$80.00 to repair the drywall, \$50.00 for the disposal of the drywall removed from the walls, \$240.00 to replace all of the laminate flooring in the bathroom, and \$115.00 to paint the bathroom after the repairs were completed. They state they were not able to replace a portion of the floor as they were not able to color match the flooring, they also claim there were not able to touch up the paint as they were not able to color match the walls.

The male Landlord testified he is a contractor and that he built the house in 2004. He conducted the repairs himself and found that when he removed the drywall there was mould behind the walls and there were no plumbing lines behind the drywall. They are seeking to keep the security deposit and recover the filing fee.

The Tenant testified that the bathroom included the toilet, sink, shower, washer and dryer. He referred to his photographic evidence in support of his testimony that the walls were not damaged by a toilet overflowing as the photos show the walls were bulging out as if there was water damage from behind and the damage was not just around the toilet but also by the shower and washer/dryer. He argued that they did not do anything to cause this damage and that it may have been a result of the work that was done when there was a fire in the upper unit. He said that after the fire the Landlord had to repair the water damage caused to the ceiling in his living room and hallway area. He then read a letter received by his latest roommate that was submitted into evidence late. This letter supports that the toilet never overflowed onto the bathroom floor and the damage caused to the walls was not the result of the Tenant's actions.

The Tenant questioned how the Landlords could retain his security deposit when they did not complete move-in or move-out inspection reports even after he requested them to do so.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Landlords' Application

I am satisfied the Landlords made their application for dispute resolution for damages to the unit in order to retain the security deposit. I do not accept their request that they applied to recover the filing fee from the Tenant. Therefore I amend the Landlord's application to include their request to retain the security deposit pursuant to the *Residential Tenancy Policy Guideline # 23*.

Section 24 of the Act provides the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulation.

After careful review of the testimony and Tenant's evidence, and in the absence of any evidence provided by the Landlords, I find there is insufficient evidence to support the Tenant violate the Act, regulation, or tenancy agreement, in a manner that caused damage to the bathroom walls or flooring. Rather the evidence before is indicative of an unseen or unknown water leak that did not present itself until it caused staining to the drywall. While the Landlords may have suffered a cost to repair the alleged damage there is no evidence before me to support the actual amounts or when the alleged work was completed. Based on the aforementioned I find the Landlords have not proven the

test for damage or loss, as listed above and I hereby dismiss their claim of \$400.00 for damage to the unit.

Having dismissed the Landlord's application above, the Landlords no longer have a right to hold the Tenant's security deposit in trust and must return the deposit plus interest to the Tenant.

Tenant's Application

The evidence supports the parties mutually agreed to end the tenancy July 15, 2010 and the Tenant provided his forwarding address, in writing to the Landlord on July 16, 2010.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than July 31, 2010. The Landlords filed their application for dispute resolution July 26, 2010.

Based on the above, I find that the Landlords have not failed to comply with Section 38(1) of the *Act* and that the Landlords are not subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

As per the aforementioned the Tenant is not entitled to the return of double the deposit; however he is entitled to the return of the initial deposit plus interest.

The Tenant has been partially successful with his claim; therefore I award recovery of the filing fee.

Monetary Order – I find that the Tenant is entitled to a monetary order as follows:

Return of security deposit	\$487.50
Filing fee	50.00
TOTAL AMOUNT DUE TO THE TENANT	\$544.81

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

A copy of the Tenant’s decision will be accompanied by a Monetary Order for **\$544.81**. The order must be served on the respondent and is enforceable through the Provincial Court 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*.

Dated: December 17, 2010.

Dispute Resolution Officer