



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Tenant MNDC, MNSD
 Landlord MND, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of their security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on October 20, 2010, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on September 22, 2010, in accordance with section 89 of the Act.

The Landlords and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Is the Landlord entitled to compensation for damages and if so how much?
3. Is the Landlord entitled to retain the Tenants' security deposit?

Tenants:

1. Has the Tenants had a loss and if so how much?
2. Is the Tenant entitled to compensation for damage or loss with respect to the August 2010 rent?

Background and Evidence

This tenancy started on September 8, 2008 as a month to month tenancy. Rent was \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on September 8, 2008. The Tenant was moved out of the rental unit on August 5, 2010.

The Tenant said that they were evicted from the rental unit on August 5, 2010 by a Bailiff. As well the Tenant said they continued to live on the grounds of the rental unit for several days until the police removed them for trespassing. The Tenant continued to say that she has applied for her security deposit of \$300.00 to be returned and she believes she should recover her August, 2010 rent of \$600.00 as she was evicted and she did not live in the unit for the full month of August, 2010.

The Tenant continued to say that a move in condition inspection report was completed, but no move out condition inspection report was done and the Landlord did not ask her to inspect the unit with him. She said the Landlord did not send her a report as to the condition of the unit after she left. The Tenant said the unit was in poor condition when she started the tenancy and she said it was in a similar condition when she left. The Tenant said that she removed the carpets during the tenancy because they were in poor condition and dirty.

The Landlord said this was a very frustrating and costly tenancy. He said the Tenant's had to be removed from the rental unit and off the grounds of the rental unit which was difficult and costly. The Landlord said he didn't have a forwarding address for the Tenants, therefore he could not send them any communications until he received the Tenant's application for dispute resolution on September 29, 2010. The Landlord said he filed an application for dispute resolution on October 18, 2010. The Landlord continued to say that the rental unit was left in very poor condition and he had to spend \$4,048.87 to repair the unit in order to rent the unit out again. The Landlord said a move in condition inspection report was done, but he did not submit it with his evidence package. The Landlord said the report indicates the unit was in acceptable condition when the Tenants moved in. The Landlord said he is applying for the costs to repair the unit of \$4,048.87, of which he has provided receipts for \$3,950.02 of the repairs. As well, the Landlord said he has applied to retain the Tenants' security deposit of \$300.00 in partial payment of the costs to repair the rental unit.

Analysis

Section 35 (1) says the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) 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.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

Section 36 (1) says the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and

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(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 38 (1) says that 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.

And Section 38 (6) says if a landlord does not comply with subsection 38(1), the landlord

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

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

I find from that the Landlord received the Tenant forwarding address in writing on September 29, 2010 with the Tenants' hearing package. The Landlord did not repay security deposit to the Tenants within 15 days of the end of the tenancy or 15 days after receiving the Tenants' forwarding address in writing, nor did the Landlord apply for dispute resolution within the 15 day limit. Consequently I find for the Tenant and grant an order for double the security deposit of \$300.00 plus accrued interest of \$1.41 from September 8, 2010 to January 12, 2010 in the amount of $\$301.41 \times 2 = \602.82 .

As well, since the Tenants lived in the unit until August 5, 2010 and the unit was not in a condition to rent for the remainder of August; I find that the Tenant is responsible for the August, 2010 rent of \$600.00 (paid in August, 2010) and I dismiss the Tenants' claim for the return of the August rent of \$600.00 without leave to reapply.

With respect to the Landlords' application for damages to the rental unit, it is essential that the Landlord establish the condition of the rental unit at the start of the tenancy so that any damage that occurred during the tenancy can be proven and the amount of damage attributed to that tenancy can be established. As the Landlord has not provided any evidence or proof of the condition of the rental unit at the start of the tenancy, I find that the Landlord has not met his burden of proof to establish the amount of damage and if the damage is attributable to this tenancy, therefore I dismiss the Landlord's claim for damage with leave to reapply.

As the Landlord was unsuccessful in his application the filing fee for this proceeding is not recoverable.

Pursuant to section 67 a Monetary Order for \$602.82 has been issued to the Tenant. This Monetary Order represents double the security deposit and accrued interest in the amount of \$602.82.



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Conclusion

I find partially in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$602.82 to the Tenant. This order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

The Landlord's application is dismissed with leave to reapply.

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: January 12, 2011.

Residential Tenancy Branch