

Decision

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

Introduction

This hearing dealt with 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security & pet damage deposits / and recovery of the filing fee; ii) by the tenants for return of the combined security & pet damage deposits / 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 September 1, 2009 to August 31, 2010. Thereafter, according to the agreement, tenancy was to continue on a month-to-month basis. Monthly rent was \$1,300.00. A security deposit and a pet damage deposit in the combined amount of \$1,000.00 was collected on August 31, 2009. A move-in condition inspection and report were not completed.

The tenants testified that they gave notice to end the tenancy effective August 31, 2009, by way of letter dated July 26, 2009. The tenants claim they deposited this letter into the landlord's mailbox along with a cheque in the amount of \$300.00. In their letter the tenants authorized the landlord to retain the security deposit and pet damage deposit in the combined amount of \$1,000.00 as payment for the balance of rent owed for August 2010. A move-out condition inspection and report were not completed.

The tenants did not provide the landlord with their forwarding address and, subsequent to the end of the tenancy, the landlord undertook herself to determine their whereabouts for the purposes of serving them with her application for dispute resolution and the notice of hearing.

While the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution during the hearing, for the most part, they presented conflicting perspectives as to the condition of the unit at the beginning and at the end of tenancy, and in relation to who said what to whom.

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. Additionally, for the information of the parties, 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/

The attention of the parties is specifically drawn to the following sections of the Act which speak to the move-in and move-out condition inspection reports:

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 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 very limited resolution. Specifically, it was agreed as follows:

- that the tenants accept responsibility for the cost to the landlord of replacing “dryer duct and clamps” in the amount of **\$8.92***;

- that the tenants accept responsibility for a limited portion of the cost incurred by the landlord for removal of possessions at the end of tenancy (this is further addressed below).

LANDLORD'S CLAIM:

Pursuant to the above legislation, with respect to both the move-in and move-out condition inspections, the “landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.” Where the offer of at least 2 opportunities has not been made, “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.”

Following from the above, as there was no move-in or move out condition inspection / report, and the landlord failed to offer at least 2 opportunities for either to be completed, the following specific aspects of the landlord's claim are hereby dismissed:

\$50.00: door latch

\$200.00: 4 damaged screens

\$21.95: toilet seat

\$100.80: carpet cleaning

\$147.00: lawn care

\$195.00: labour to patch walls and paint

\$1,200.00: damages to billiards table

\$65.00: cleaning

\$54.00: haul garbage away. Based on the documentary evidence and testimony of the parties, I find that the landlord has established entitlement limited to \$25.00* for removal of a bed frame acknowledged by the tenants as having been left behind. The tenants

deny that any additional possessions or garbage were left behind and, as previously, noted, there are no move-in or move-out condition inspections / reports.

\$300.00: *move and reset billiards table to original location*. The tenants acknowledge that they relocated the billiards table. Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the billiards table suffered some form of damage upon being relocated by the tenants. Again, however, I note the absence of either a move-in or move-out condition inspection / report. In the result, I find that the landlord has established entitlement limited to \$150.00*.

\$1,000.00*: *rent for August*. The parties agree that rent for August of \$1,300.00 was limited to cheque payment in the amount of \$300.00. Accordingly, I find that the landlord has established entitlement to the full amount claimed.

\$50.00*: *filing fee*. As the landlord has achieved some success with her application, I find that she has established entitlement to the full amount claimed.

Following from the above, I find that the total amount of entitlement established by the landlord is \$1,233.92 (\$8.92 + \$25.00 + \$150.00 + \$1,000.00 + \$50.00). I order that the landlord retain the security deposit and the pet damage deposit in the combined amount of \$1,000.00, and I hereby issue a monetary order in favour of the landlord for the balance owed of \$233.92 (\$1,233.92 - \$1,000.00).

TENANTS' CLAIM:

As the tenants' security deposit and pet damage deposit in the combined amount of \$1,000.00 has been used to offset the landlord's claim, as above, the tenants' application to have these amounts reimbursed is hereby dismissed. Further, as the tenants have not succeeded with their application, the application to recover the filing fee is also hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$233.92**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: January 13, 2011

Dispute Resolution Officer