



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord for a monetary order as follows:

- For money owed or compensation for damage or loss under the Residential Tenancy Act; - Section 38
- To keep all or part of the damage deposit; - Section 67
- To recover the filing fee. – Section 72

Issue(s) to be Decided

Whether the Landlord has established a claim for money owed or compensation for damage or loss.

Background and Evidence

The tenancy began February 1, 2007 on a 1 year fixed term. The initial rent was \$1,450.00. In January 2008, another one (1) year fixed term lease was signed and the rent increased to \$1,750. In January 2009 a third one (1) year fixed term lease was signed and the rent increased to \$1,800.00. A security deposit of \$725.00 was paid to the Landlord at the time the tenancy began and additional amounts of \$150.00 and \$25.00 were collected by the Landlord at the times of the renewed lease dates for security deposit increases. The total amount of the security deposit held by the Landlord at the time of the dispute was \$900.00. In January 2011, the Tenants did not enter into a fourth lease and the tenancy continued on a month to month basis.

On October 9, 2010, the agent or property manager for the Landlord verbally told the Tenants that they were being evicted and were to leave the rental by the end of September. On October 14, 2010 the Tenants sent a letter to the Landlord setting out those eviction details and providing notice that they had found another tenancy and would be moving out on or before October 31, 2010. The letter sets out their forwarding

address and requests a return of the damage deposit. On October 15, 2010, the Landlord provided a letter to the Tenants refuting the eviction notice and reminding the Tenants of a one month notice requirement for ending the tenancy. The Tenants vacated the residence by October 31, 2010.

At the time the tenancy first began, no move-in inspection was requested or completed by the Landlord. When the tenancy ended, a move-out inspection was completed between the Landlord and Tenants however the Landlord did not provide a copy of this report to the Tenant. The Tenants state that the move-out report provided for the Hearing was not the same move-out report they signed at the time of the inspection. The Tenant's state that comments were inserted and codes were overwritten. The Landlord denies that any changes were made to the move-out report.

The Landlord states that the Tenants left the rental unit insufficiently clean and the walls required paint. The Tenants indicated that the only things left unclean at their departure was a carpet that had not been cleaned and the inside of an appliance. The Tenants state that the walls were not freshly painted upon their move into the residence and were not painted during the tenancy. Pictures of the rental unit were submitted by both parties.

The Landlord submitted an unsigned and undated invoice for \$1,500.00 for the cost of painting an unknown number of the interior residence walls, along with copies of two (2) cheques dated November 15, 2010 totalling \$1,400.00 to the company named on the invoice. The Landlord stated that the discrepancy between the invoice and the paid cheques amounted to the \$100.00 paid for the painting supplies. The invoice contained no break-down between labour and supplies, not did it include any hourly amount for the labour. The Landlord states that they did not attempt to rent the unit in November and that they still have not rented out that unit and will not do so until extensive repairs are made to the residence at some point in the future.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24 of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report in accordance with the regulations, the right to claim against that deposit for damage to the residential property is extinguished. As agreed by the Landlord and Tenant, no move-in inspection report was done. I find accordingly that the Landlords right to retain

all or a portion of the security deposit against damage to the rental property has been extinguished.

Section 45 provides that a Tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. Section 44 of the Act provides that where a tenant vacates the unit, the tenancy ends. The Act does not provide the Landlord with an automatic right to a month's rent should the tenant fail to give proper notice. The Act does however require a Landlord to mitigate any losses that might accrue as a result of the Tenant's actions or lack thereof. In this case, although the Landlord should have been provided proper notice and may have been entitled to recover losses for November rent as a result of that lack of notice, the Landlord did nothing to mitigate any loss of rental income for that month. Accordingly, I dismiss the landlord's application without leave to reapply and make no order for the recovery of the filing fee. I further find that the Tenant has a right to return of their security deposit calculated as follows:

For the period February 1, 2007 to October 31, 2010, the amount of \$725 plus interest of 20.97, or \$745.97. For the period January 1, 2008 to October 31, 2010, the amount of \$150.00 plus interest of \$2.25, or \$152.25. For the period January 1, 2009 to October 31, 2010, the amount of \$25 plus interest of \$0.00, or \$25.00.

The total amount of security deposit and interest to be returned is **\$923.22** ($745.97 + 152.25 + 25.00 = 923.22$.)

Conclusion

The Landlord's application is hereby dismissed without leave to reapply.

The Landlord is ordered to return the security deposit and interest in the amount of **\$923.22**. The Tenant is granted and issued an order in those terms. This order may be enforced in the Provincial Court of British Columbia.

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: March 08, 2011.

Residential Tenancy Branch