



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MND, MNSD, MNDC, 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 compensation for damage to the unit, site or property, for compensation for damage or loss under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of his security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on November 17, 2010. Only one of the four Tenants on the tenancy agreement was serviced with the Landlords hearing documents. Rule # 3.1 of the Residential Tenancy Branch Rules of Procedure says each respondent must be served with the hearing package.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on March 4, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant 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 compensation for damage of loss to the unit and if so how much?
4. Is the Landlord entitled to retain the Tenant's security deposit?



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Tenant:

1. Is the Tenant entitled to recover the security deposit and if so how much of the security deposit?

Background and Evidence

This tenancy was renewed from a previous tenancy with the same parties and it started on September 1, 2009 as a fixed term tenancy with an expiry date of August 31, 2010. Rent was \$2,500.00 per month payable in advance of the last day of the month for each month. The Tenant paid a security deposit of \$250.00 in March 2008 and \$950.00 in April, 2008. The Tenant moved out of the rental unit on August 31, 2010 at the end of the fixed term tenancy.

The Tenant said that he moved out of the rental unit on August 31, 2010 and gave the Landlord a forwarding address in writing by registered mail on October 21, 2010. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that they cleaned the yard as best as they could before leaving. He said the Landlord did not offer a move out inspection meeting nor did the Landlord return his security deposit.

The Landlord said he submitted as evidence a list of repairs and clean up that he did after the Tenant moved out and he felt that the repairs were due to damage the Tenant caused during the tenancy. The Landlord said the damages include two smoke detectors that were missing at a cost of \$110.00, a knob on the stove was broken at a cost of \$61.00, rubbish removal at a cost of \$414.75 and a sublet fee of \$400.00 that the Landlord said the Tenant was responsible for. The landlord said he was amending his claim from the \$1,900.00, which he said was a random number to \$1,035.75 as itemized above.

The Landlord said he did receive a forwarding address in writing from the Tenant in the first week of November, 2010. The tracking information supplied by the Tenant indicates the Tenant's forwarding address was received by the Landlord on October 22, 2010. The Landlord said he did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit for damages to the rental unit until November 12, 2010.

Analysis

From the Landlord's written evidence and testimony it is apparent that he did not serve each of the tenants as required by the Act in the Rules of Procedure section 3.1; consequently the Respondents/Tenants were not aware of the application by the Landlord and they were unable to attend the hearing or defend themselves. As a result I dismiss the Landlord's application with leave to reapply.

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

36 (1) 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

(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;

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(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 (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.

I find from that the Landlord received the Tenant forwarding address in writing on October 22, 2010. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution by November 5, 2010 or within the 15 day limit. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,200.00 plus accrued interest of \$12.42 from March, 2008 on the \$250.00 security deposit and the \$950.00 security deposit from April, 2008 in the amount of $\$1,212.42 \times 2 = \$2,424.84$.

As the Tenant was successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$2,474.84 will be issued to the Tenant. This Monetary order represents double the security deposit and accrued interest in the amount of \$2,424.84 and the filing fee of \$50.00.



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Conclusion

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

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 of the Act, I grant a Monetary Order for \$2,474.84 to the Tenant. The order must be served on the Respondent/Landlord and is enforceable through the Provincial Court of British Columbia (small claims 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*.

Residential Tenancy Branch