



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD
OPL, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications by the tenant and landlord. The tenant's application is for return of the security deposit. The landlord's application is for an order of possession for landlord's use of property, a monetary order for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy began January 15, 2010 with monthly rent of \$775.00, the tenants paid a security deposit of \$387.50 and a pet damage deposit of \$387.50. On October 15, 2010 the property was sold and the landlords named in this application took possession of the property. The tenants vacated the rental unit on November 30, 2010 under a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant testified that at the start of the tenancy they signed an addendum to the rental agreement stating that they would be responsible for ensuring that the furnace oil tank had the same amount of oil in it at the end of the tenancy that was in the tank at the start of the tenancy. The tenant stated that the furnace oil tank was 75% full when they took possession of the rental unit on January 15, 2009. The tenant stated that they had the furnace oil tank topped up and when checked in the landlord's presence on November 30, 2011 the furnace oil tank was 75% full.

The tenant stated that the carpets had been cleaned on a monthly basis during the tenancy and that at the end of the tenancy the carpets and rental unit were thoroughly cleaned.

The tenant stated that the previous landlord did not want to complete a move-in condition inspection report as the rental unit was fairly new and in good condition. The

tenant testified that on November 30, 2010 the former landlord, new landlord and tenants completed a move-out walk-through of the rental unit but that a move-out condition inspection report was not completed. The tenant stated that she requested to have the move-out condition of the property in writing but that the landlord was not willing to complete the report.

The tenant stated that on December 1, 2010 the landlord had a document ready for the tenants that reflected \$565.19 in deductions from the tenant's security deposit and pet damage deposit for furnace oil, weather stripping and carpet cleaning. The tenants did not agree with the deductions and refused to sign the document and accept the \$209.81 balance of the deposits held by the landlord.

The tenants in this application are seeking return of double the security deposits.

The landlord testified that the furnace oil tank was not 75% full but 100% full when the tenants took possession of the rental unit in 2009. The landlords referred to an email communication between the previous landlord and the tenants from January 29, 2009 where the landlord states *'Also as of today the oil tank is full'*. The tenant maintains that her copy of this same email does not contain this line and disputes that the oil tank was 100% full at the start of the tenancy.

The landlord stated that during the move-out walk-through inspection the cost of topping up the furnace oil tank to 100% was discussed but that the landlord wanted to have the tank filled in order to get an accurate dollar amount. The landlord stated that the tenant offered to pay \$100.00 towards oil for the tank but the landlord declined this offer, the tenant in this hearing disputed that this conversation took place. The landlords maintain that the tenants knew the tank was to be 100% full however the tenants vacated with the tank at 75% full.

The landlords stated that the carpets had to be professionally cleaned as the tenants had a pet and the carpets were very dirty. The landlord stated that the weather stripping on the basement doors was damaged and had to be replaced. The landlord's evidence reflects other damage to the rental unit however the landlord has not made a claim to recover these costs. The landlords in this application are seeking \$565.19 compensation for damage or loss.

Furnace Oil	\$375.61
Weather Stripping - basement door	\$44.79
Weather Stripping - basement door	\$44.79
Carpet Cleaning	\$100.00
Total Claim	\$565.19

Analysis

Based on the documentary evidence and testimony of the parties I find that the landlord has not met the burden of proving that they are entitled to \$375.61 in compensation for furnace oil. The previous landlord did not adequately document the amount of oil in the furnace oil tank at the start of the tenancy and the tenant maintained that the tank was 75% full at the start of the tenancy on January 15, 2009.

Even if the landlord did 'top off' the oil tank on January 29, 2009, the tenants had already been occupying the rental unit for two weeks and would have been using oil from the tank to heat the residence and the January 29, 2009 'top up' amount would not accurately reflect the level of the oil in the tank on January 15, 2009. Therefore this portion of the landlord's application is dismissed.

Based on the documentary evidence and testimony of the parties I find that the landlord has not met the burden of proving that they are entitled to \$189.58 compensation for replacement of the weather stripping on the basement doors or carpet cleaning. In the absence of move-in and move-out inspection reports and conflicting testimony from the parties, I find that there is insufficient evidence on which to base this claim. Therefore this portion of the landlord's application is dismissed.

The landlord's application is dismissed in its entirety without leave to reapply. As the landlord has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties I find that the tenants are entitled to return of the \$387.50 security deposit and \$387.50 pet damage deposit.

As the landlords did comply with Section 38 (1) of the Act and submitted their application to claim against the deposits within 15 days time from the end of the tenancy, the tenants are not entitled to return of double the security deposit and pet damage deposit and this portion of the tenant's application is dismissed.

I find that the tenants have established a total claim for \$775.00 in return of the deposits held by the landlord.

As the tenants have had some success in their application they are entitled to recovery of \$25.00 of the filing fee.

Conclusion

I find that the tenant has established a monetary claim for **\$775.00**. The tenant is also entitled to recover \$25.00 of the filing fee.

A monetary order in the amount of **\$800.00** has been issued to the tenant and a copy of it must be served on the landlord. If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: April 27, 2010

Residential Tenancy Branch