



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit, for compensation equal to the amount of the deposit due to the Landlords' alleged failure to return the deposit as required by the Act, for compensation for personal property wrongfully disposed of by the Landlords and to recover the filing fee for this proceeding. The Landlords applied for compensation for cleaning expenses, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in payment of those amounts.

Issue(s) to be Decided

1. Are the Tenants entitled to the return of their security deposit and if so, how much?
2. Are the Tenants entitled to compensation for personal property that the Landlords removed from the rental unit?
3. Are the Landlords entitled to compensation for cleaning expenses?

Background and Evidence

This tenancy started on September 1, 2009. Rent was \$940.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of \$470.00 at the beginning of the tenancy.

The Tenants claim that they wanted to move out on October 15, 2010 and wanted to pay only a half of a month's rent but the Landlords would not agree to this and as a result, they paid rent for the whole month of October 2010. The Tenants claim that once they realized they had to pay for the whole month of October 2010, they advised the Landlords they would be moving out at the end of October 2010. The Tenants said they moved out most of their belongings on October 15, 2010 but returned to the rental unit approximately 3 more times in the following week. The Tenants said they saw notices posted to the rental unit door during this time.

The Tenants said they contacted the building manager on October 25, 2010 and she advised them that she had already removed any belongings they had left in the suite, had cleaned the suite and wanted them to pay those expenses. The Tenants said they

arranged to meet with a building manager on October 28, 2010 to discuss the matter further and on that date she asked them to sign the condition inspection report which they refused to do. The Tenants said they also discovered on that day that the Landlords had changed the locks on the rental unit. The Tenants argued that because they paid rent for the full month, the Landlords wrongfully entered the rental unit and removed 8 house plants, a picture and an internet modem which they estimated had a combined value of \$150.00. The Tenants also argued that the Landlords denied them the opportunity to mitigate their losses by cleaning the rental unit and changing the locks before the end of the tenancy.

The Landlords argued that they believed the Tenants had moved out on October 15, 2010 as per their first written notice and they gave her an incomplete telephone number. Consequently, the Landlords claimed they were unable to contact the Tenants. The Landlords said they left written notices of inspection for the Tenants under the rental unit door on October 19, 22 and 23, 2010. Consequently, the Landlords said they did a move out inspection on October 24, 2010 without the Tenants. The Landlords claim that the Tenants left nothing of value behind except a small television and some cable wires. The Landlord (B.K.) said she arranged for the Tenants to meet with the new building manager on October 28, 2010 and the Tenants did not attend that meeting however she admitted that she was not certain of this. The Landlords argued that the Tenants had no intention of cleaning the rental unit.

The Landlords admitted that they received the Tenants' forwarding address in writing on November 2, 2010 and that they did not have the Tenants' written authorization to keep the security deposit. The Landlords said they sent a cheque in the amount of \$112.00 to the Tenants' forwarding address on or about November 10, 2010 but were unsure if the Tenants had cashed it. The Tenants denied receiving that cheque. The Landlords said the amount returned to the Tenants was the balance left over after deducting \$300.00 for general cleaning and \$88.00 for carpet cleaning from the Tenant's security deposit of \$470.00 and a rent overpayment of \$30.00 for October 2010.

Analysis

Sections 35(1) of the Act says that a "Landlord and Tenant together must inspect the condition of the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed to day." Section 35(2) of the Act says that a "Landlord must offer a Tenant at least two opportunities for the inspection."

Section 17 of the Regulations to the Act says a Landlord must offer a tenant a first opportunity to schedule the condition inspection by proposing one or more dates. If a Tenant is not available on one of these dates, the Landlord must propose a second opportunity (different from the first opportunity) **by providing the tenant with a notice in the approved form** (emphasis added).

The Landlords claim that the tenancy ended on October 15, 2010 because that was the date the Tenants gave in their first written notice and that was the date they moved out.

The Tenants claim they only proposed to end the tenancy on October 15, 2010 if they were only going to be responsible for paying rent up to that date. The Tenants said the Landlords refused to accept this notice and required them to pay rent for the whole month. In the circumstances, I find that the tenancy did not end on October 15, 2010 because the Landlords rejected the Tenants' notice proposing that date. Instead, I find that the Landlords required the Tenants to pay rent for the full month of October 2010 and therefore I find that the Tenants were entitled to possession of the rental unit until October 31, 2010.

The Landlords said they gave the Tenants written notice that they would be doing a move out inspection on October 24, 2010 but the Tenants refused to participate. However, I find that the Notices given to the Tenants were not proper notices as required under s. 35 of the Act. The three Notices say that the Landlord will enter the suite between 8:30 a.m. and 5:30 p.m. The Notices dated October 22 and 23, 2010 say that the purpose of the entry is for a "suite inspection." None of the notices are proper notices of a move out inspection because they do not propose a specific time for a move out inspection nor do they adequately inform the Tenants about the type of inspection or advise them that their participation is required or the consequences of not participating. That is the reason why a Landlord is required under s. 17 of the Regulations to serve a Tenant with and "approved form" called a "Final Opportunity to Schedule a Condition Inspection." Consequently, I find that the Landlords did not comply with s. 35 of the Act and as a result, pursuant to s. 36 of the Act, the Landlords' right to keep the security deposit or to make a claim against the security deposit for cleaning expenses was extinguished.

Section 38(1) of the Act says that if a Landlord's right to keep the security deposit is extinguished then a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to return the Tenant's security deposit. If the Landlord does not return the security deposit and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

As indicated above, I find that the Landlords' right to keep the Tenants' security deposit for cleaning expenses was extinguished under s. 36 of the Act because the Landlords did not comply with s. 35 of the Act. I find that the tenancy ended on October 28, 2010 when the Landlords changed the locks on the rental unit. The Landlords admit that they received the Tenants' forwarding address in writing on November 2, 2010 and that they did not have the Tenants' written authorization to keep the security deposit. Consequently, I find that the Landlords had until November 17, 2010 to return the Tenants' security deposit **in full**. The Landlords said they returned \$112.00 to the Tenants which the Tenants denied.

As a result, of the Landlords' failure to return the Tenants' security deposit in full by November 17, 2010 as required by s. 38(1) of the Act, I find that the Tenants are entitled to recover compensation equal to the amount of the security deposit as

provided under s. 38(6) of the Act. In the absence of any evidence from the Landlords that the Tenants cashed the cheque for \$112.00, I find that the Tenants have not received any of their security deposit back and as a result, I find that they are also entitled to recover that amount. Consequently, I find that the Tenants are entitled to the amount of \$940.00. However, I find that there is insufficient evidence to support the Tenants' claim for compensation of \$150.00 for personal possession discarded by the Landlords. In particular, the Tenants provided no evidence of the value of the articles in question and as a result, that part of their application is dismissed without leave to reapply. The Tenants are entitled however to recover from the Landlords the \$50.00 filing fee they paid for this proceeding.

As the Landlords' right to make a claim against the security deposit for cleaning expenses was extinguished under s. 36 of the Act, that part of their application is dismissed without leave to reapply. As the tenancy had not ended on October 24, 2010 when the Landlords cleaned out the rental unit, I find that the Landlords failed to give the Tenants an opportunity to mitigate their losses by doing the cleaning themselves and as a result, that part of the Landlords' claim is dismissed without leave to reapply. The Tenants agreed during the hearing that the Landlords could retain \$88.00 for carpet cleaning expenses and as a result, I find that the Tenants are entitled to a monetary order as follows:

Security deposit:	\$470.00
Section 38(6) Compensation:	\$470.00
Filing fee:	<u>\$50.00</u>
Subtotal:	\$990.00
Less: Carpet Cleaning:	<u>(\$88.00)</u>
Balance owing:	\$902.00

Conclusion

The Landlords' application is dismissed without leave to reapply. The Tenants' application is granted in part. A Monetary Order in the amount of **\$902.00** has been issued to the Tenants and a copy of the Order must be served on the Landlords. If the amount is not paid by the Landlords, 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 11, 2011.

Residential Tenancy Branch