



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / compensation for the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

This month-to-month tenancy began on September 1, 2008. By way of e-mail dated November 30, 2010, the tenant gave notice of his intent to end the tenancy effective December 31, 2010. The parties could not confirm the exact amount of monthly rent at the time when tenancy ended, but agreed that it was approximately \$1,570.00. During the hearing the parties also agreed that the amount of the original security deposit is \$750.00, not \$600.00 as shown in the tenant's application. Further, it is noted that 2 or 3 other persons resided in the unit with this tenant for varying lengths of time during the term of his tenancy.

There is no evidence of either a move-in or move-out condition inspection report. The parties agree that while the tenant informed the landlord of his forwarding address by way of e-mail dated February 9, 2011, the security deposit has not presently been repaid. As well, the landlords have not filed an application for dispute resolution.

Further to seeking the double return of his security deposit, the tenant seeks reimbursement for costs associated with repairs to the hot tub and/or the Jacuzzi located at the rental unit. Evidence submitted by the tenant includes two invoices in the amounts, respectively, of \$162.75 and \$651.34.

As to costs incurred by the tenant in association with the hot tub and/or the Jacuzzi, the landlords referred to clause # 1 of the tenancy agreement which provides as follows:

1. Use of the outdoor hot tub, indoor Jacuzzi system and fireplace are allowed however the tenants take on full risk, maintenance and liabilities associated with the use of these items.

The landlords also testified that the tenant proceeded to have work done on the hot tub and/or the Jacuzzi, and incurred related costs, without any consultation with them or approval from them.

During the hearing the parties exchanged views on various aspects of the dispute, including the landlords' view which is that the tenant still owes an amount for utilities. The parties were unable to achieve a resolution of their dispute during this hearing.

Analysis

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/

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 33 of the Act addresses **Emergency repairs**, and provides in part as follows:

33 (3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the conditions in subsection (3) were met.

Further to the conditional access by tenants to the “outdoor hot tub and indoor Jacuzzi system” which is referenced in the tenancy agreement, I find there is insufficient evidence that work undertaken on the hot tub and/or the Jacuzzi was such that it constituted an “emergency repair.” Further, even if the work could be considered to be an “emergency repair,” there is no evidence that the tenant contacted the landlords in regard to any concerns, or that the tenant otherwise sought approval from the landlord in advance of proceeding to have any work undertaken. In the result, the aspect of the tenant’s application concerning reimbursement of costs associated with the hot tub and /or the Jacuzzi is hereby dismissed.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**, and provides in part as follows:

38(1) 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;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the documentary evidence and testimony of the parties, I find that the landlords have not either repaid the tenant's security deposit or filed an application for dispute resolution within 15 days after being informed of his forwarding address on February 9, 2011. Accordingly, pursuant to the above statutory provisions, I find that the tenant has established entitlement to the double return of his security deposit in the amount of \$1,550.00 (2 x \$775.00), in addition to interest in the amount of \$3.88.

As the tenant has achieved a measure of success with his application, I find that he has also established entitlement to recovery of the \$50.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,603.88** (\$1,550.00 + \$3.88 + \$50.00). Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court 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*.

DATE: June 10, 2011

Residential Tenancy Branch