



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with 2 applications: i) the by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / 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 either party is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from on or about July 16, 2010 to August 31, 2011. Monthly rent was \$800.00 and a security deposit of \$400.00 was collected. A move-in condition inspection and report were completed with the participation of both parties.

The tenant gave notice in writing on January 31, 2011 of his intent to end the tenancy effective February 28, 2011. In that same letter the tenant informed the landlord of his forwarding address. Subsequently, the tenant vacated the unit on or about February 16, 2011. Together the parties completed a move-out condition inspection and report, and the tenant does not dispute the aspect of the landlords' claim for \$85.00 as reimbursement for the cost of cleaning carpets. The landlord testified that new renters were found for the unit effective March 1, 2011.

During the hearing the tenant acknowledged that he had initialed his awareness / acceptance of the "liquidated damages" clause on the tenancy agreement, pursuant to which a tenant is responsible for this cost in the amount of the security deposit (\$400.00), in the event of his early termination of the fixed term of tenancy.

The tenant described recurring disturbances from the upstairs resident and/or that resident's guests, as his principal reason for ending the tenancy early. The landlord acknowledged receipt of 4 letters from the tenant in which he expressed his concern about noise from the upstairs resident and/or his guests. The landlord testified that she notified the upstairs resident about this concern both, orally and once in writing. The landlord takes the position that noise disturbance described by the tenant is a function of the experience of living within a wooden structure, as opposed to a concrete structure. The landlord also noted that no other complaints about noise from the upstairs resident have been brought to her attention.

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/

LANDLORD'S CLAIM:

Based on the documentary evidence and testimony, I find that the landlord has established entitlement to recovery of \$85.00 for carpet cleaning, and \$400.00 as "liquidated damages." As the landlord has succeeded in this application, I find that the landlord has also established entitlement to recovery of the \$50.00 filing fee. In summary, the total entitlement established by the landlord is therefore \$535.00 (\$85.00 + \$400.00 + \$50.00).

TENANT'S CLAIM:

Section 38 of the Act speaks to **Return of security deposit and pet damage deposit**. In short, a landlord must pay a tenant double the amount of the security deposit if the landlord has not either, returned the original security deposit, or filed an application for dispute resolution within the latter of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing. In the circumstances of this dispute, the tenancy effectively ended on February 28, 2011, and the landlord's application for dispute resolution was filed on March 15, 2011. In the result, I find that the tenant has not established entitlement to the double return of any portion of the security deposit.

As to the tenant's application to recover rent for the latter half of February 2011, in view of his having vacated the unit in mid February 2011, I refer to section 45 of the Act which speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant's notice to end the fixed term tenancy does not comply with the above statutory provisions, I find that the tenant has not established entitlement to reimbursement of half of the rent for February 2011. Accordingly, this aspect of the tenant's application is hereby dismissed.

Concerning the final aspect of the tenant's application, section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides in part, that a tenant is entitled to quiet enjoyment including, but not limited to, a right to "freedom from unreasonable disturbance." Additionally, Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment" and provides in part, as follows:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Based on the documentary evidence and testimony, I find that the tenant's letters of concern to the landlord about noise from the upstairs resident are limited to 3 letters in November 2010, dated respectively, November 9, 15 & 22. These letters preceded the tenant's final letter dated January 31, 2011, in which he provided his notice to end tenancy. Accordingly, I find that the tenant's formal notification to the landlord spans a relatively short period of time within the overall term of tenancy.

I further find that the landlord responded to the tenant's concerns by speaking with the resident, as well as by formally taking the matter of noise to the attention of the resident in writing. In the result, I find that the tenant suffered "temporary" discomfort or inconvenience, and I further find that the landlord took reasonable steps to address the problem. Accordingly, I find on a balance of probabilities that the tenant has failed to meet the burden of proving entitlement to compensation for an alleged breach of the right to quiet enjoyment.

As the above aspects of the tenant's application have not succeeded, the tenant's application to recover the filing fee, is also hereby dismissed.

As for the monetary order, pursuant to the above, I find that the landlord has established a claim of \$535.00. I order that the landlord retain the security deposit of \$400.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$135.00 (\$535.00 - \$400.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$135.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is hereby dismissed.

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 28, 2011

Residential Tenancy Branch