

DECISION

Dispute Codes:

Tenants' application filed April 12, 2011: MNSD; MNDC; FF

Landlords' application filed April 27, 2011: MNR; MND; MNSD; FF

Introduction

This matter was convened to hear cross applications. The Tenants are applying for a monetary order for double the security deposit paid to the Landlords; for compensation for damage or loss; and to recover the cost of the filing fee from the Landlords. The Landlords are applying for damages and the cost of cleaning the rental unit at the end of the tenancy; for unpaid rent; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenants served each of the Landlords with their Notice of Hearing documents in accordance with the provisions of Section 89(1)(a) of the Act, and that the Landlords served each of the Tenants with their Notice of Hearing documents in accordance with the provisions of Section 89(1)(c) of the Act. The Landlords provided the Canada Post tracking numbers for the documents.

Issues to be Decided

- Are the Tenants entitled to a monetary order for double the security deposit pursuant to the provisions of Section 38(6) of the Act?
- Are the Tenants entitled to compensation for new tenants moving in before the end of the tenancy?
- Are the Landlords entitled to recover the cost of cleaning the rental unit, repairs to the rental unit and the cost of replacing the locks?
- Are the Landlords entitled to a monetary award for 10 days of unpaid rent at the beginning of the tenancy?

Background and Evidence

The tenancy was to begin on May 1, 2010, but the Tenants moved into the rental unit on April 20, 2010. The Landlords did not require any rent be paid for the portion of April that the Tenants were living in the rental unit. Monthly rent was \$1,200.00, due on the first day of each month. The Tenants paid a pet damage deposit and a security deposit in the total amount of \$1,200.00 at the beginning of the tenancy. No condition inspection that meets the requirements of the Act was conducted at the beginning of the tenancy.

The Tenants verbally advised the Landlords that they would be moving out of the rental unit by March 31, 2011, but that they might be out earlier. On March 20, 2011, the male Tenant met with the Landlords for a walk through of the rental unit. No condition inspection that meets the requirements of the Act was conducted at the end of the tenancy. The Tenants left a fish tank and some cleaning supplies at the rental unit. The Landlord testified that the male Tenant told her he would be back for the tank the following day to dispose of it, but he did not return.

The Tenant testified that she was away on March 20, 2011, and that she intended to do a final inspection with the Landlords when she returned on March 27, 2011. She stated that when she returned there were new tenants living in the rental unit. The Landlord stated that the Tenant did not tell her that she wanted to do a final inspection and that the male Tenant had told the Landlord that they had moved out on March 20, 2011. The Landlords received the Tenants' forwarding address in writing on April 12, 2011.

The Tenants seek a monetary award calculated as follows:

Double the amount of the security deposit	\$2,400.00
Compensation for the new tenants moving in before March 31, 2011	<u>\$300.00</u>
TOTAL	\$2,700.00

The Landlord testified that the Tenants did not return the keys to the rental unit at the end of the tenancy, so the Landlords had to replace the locks. The Tenant stated that the key to the back entrance was left in the rental unit. The Tenant agreed that she had not returned the front door key to the Landlords.

The Landlord testified that the new tenants did not pay rent for the balance of March, 2011, and that she gave the new tenants the same opportunity as the Tenants had: to move into the rental unit early without charge because it was empty.

The Landlord stated that the Tenants' cat had damaged some screens, curtains and blinds. She stated that the Tenants did not leave the rental unit in reasonably clean condition at the end of the tenancy, and that the carpets were not shampooed.

The Landlords seek a monetary award calculated as follows:

Replace screen on patio door	\$53.76
Cost of shampooing carpets	\$268.80
Cost of replacing damaged curtains in dining and living rooms	\$494.10
Cost of replacing damaged blinds in two bedrooms	\$107.42
Cost of changing locks	\$51.69
Cost to clean the rental unit (8 hours @\$30.00 per hour)	\$240.00
Unpaid rent from April 20, 2010 to April 30, 2010	<u>\$400.00</u>
TOTAL	\$1,505.77

The Tenant agreed that the carpets had not been shampooed at the end of the tenancy, but did not agree to any other claim made by the Landlord.

Analysis

I have considered all testimony and documentary evidence that met the requirements of the rules of procedure. However, I have referred only to the evidence that was relevant to the cross applications in this Decision.

A security deposit is held in a form of trust by the Landlords for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, the Landlords filed their application claiming against the security deposit 15 days after receiving the Tenants' forwarding address. Therefore, Section 38(6) of the Act does not apply to this situation.

This tenancy was challenged by the fact that neither party complied with the Act. For example, the Landlords did not complete a Condition Inspection Report with the Tenants at the beginning or the end of the tenancy and the Tenants did not provide the Landlords with written Notice that they were ending the tenancy on a date certain.

I find, based on the testimony of both parties and the balance of probabilities, that the Tenants moved out of the rental unit on March 20, 2011. The Landlord did not collect rent from the new tenants for the balance of March, 2011. The Tenants have not established their claim for compensation in the amount of \$300.00 and this portion of their application is dismissed.

The Landlords seek a monetary award for damages and therefore the onus is on the Landlords to satisfy the following elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant agreed that they had not shampooed the carpets at the end of this one year tenancy. The Residential Tenancy Guidelines provide that carpets must be cleaned at the end of a tenancy of one year, especially if the Tenants had a pet. The Landlords provided a receipt for the cost of shampooing the carpets. Therefore, I find the Landlords have established their claim for the cost of shampooing the carpets.

The Residential Tenancy Guidelines also provide that Tenants **must** return all keys to the rental unit in their possession at the end of the tenancy. The Tenant acknowledged that she had not returned the front door key. The Landlords did not provide a receipt for the cost of changing the lock, and therefore I award them a nominal amount of \$25.00 for this portion of their application.

The Landlords did not require rent for April 20, 2010, to April 30, 2010 at the beginning of the tenancy and they cannot unilaterally change that agreement now. This portion of their claim is dismissed.

The Landlords have not provided sufficient evidence to support the remainder of their claim. They did not provide the Tenants with a Notice to conduct an Inspection, as required by Residential Tenancy Regulation 17. Therefore the remainder of the Landlords' application is dismissed.

Both parties have been partially successful and I order that the parties each bear the cost of their own filing fees.

The Landlord has established a monetary award in the amount of \$293.80 against the Tenants. Pursuant to the provisions of Section 72 of the Act, I hereby apply \$293.80 against the security and pet damage deposits held by the Landlords, and order the Landlords to return the balance in the amount of \$906.20 to the Tenants.

Conclusion

I hereby grant the Tenants a Monetary Order in the amount of **\$906.20** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 06, 2011.

Residential Tenancy Branch