



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for damage or loss under the Act, regulations or the tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of their security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on May 6, 2011, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on May 13, 2011, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages or loss to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation for damages or loss and if so how much?
3. Is the Landlord entitled to retain all or a part of the Tenants' security deposit?

Tenant:

1. Is the Tenant entitled to the return of part or all of their security deposit?

Background and Evidence

This tenancy started on September 1, 2009 as a month to month tenancy. Rent was \$1,100.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 on August 29, 2009. The Tenant said they moved out of the rental unit on April 30, 2011 and the Landlord said the Tenants moved out on May 1, 2011.

The Tenant said they moved out of the rental unit as part of an agreement with the Landlord. The Tenant said there was no tenancy agreement written for this tenancy and no move in or move out condition inspection reports were completed by the Landlord. The Tenant continued to say that they left the unit in better condition than when they moved into the unit. the Tenant said they cleaned the house and yard before they moved out on April 30, 2011. The Tenant said they met with the Landlord on May 1, 2011 as agreed to do the move out condition inspection, to return the keys and she gave the Landlord her forwarding address. The Tenant said the Landlord did not complete the move out condition inspection report and she wrote down the Tenant's forwarding address. The Tenant said the Landlord said she would forward the Tenant's security deposit in 5 days. The Tenant continued to say the Landlord did not return her security deposit and as a result she has made this application to get her security deposit of \$550.00 returned.

The Landlord agreed she did not complete a tenancy agreement and there was no move in and move out condition inspection reports completed. The Landlord said the Tenants left the house in an unclean state so she had to hire a cleaning company to clean the house. The Landlord provided photographs as evidence as to the state of the house. The Landlord submitted a receipt for \$330.00 for cleaning the house. As well the Landlord said the Tenants did not move out until May 1, 2011 and as a result she had to stay overnight in a hotel to meet with the Tenants the next day. The Landlord said she is claiming the hotel costs of \$89.04 because the Tenants did not move out on April 30, 2011 but they did move out May 1, 2011.

The Landlord provided a witness I.F. The Witness said the rental unit was not clean when the Tenants moved out and the Landlord her daughter had to hire a cleaning company to clean the rental unit.

The Tenant said in closing that they moved out on April 30, 2011 and they had cleaned the house and yard. She said she believes the house and yard were cleaner than when they moved in. The Tenant requested to have her security deposit returned to her as well as the filing fee of \$50.00 for this proceeding.

The Landlord said the rental unit was not clean when the Tenants moved out and she is claiming compensation for cleaning and repairing the rental unit as well as her hotel costs for the night of April 30, 2011. The Landlord said she did not provide any other receipts except for the cleaning company and the hotel costs in her evidence. The Landlord said she believes she is entitled to retain the Tenant's security deposit of \$550.00.

Analysis

Section 23 and Section 35 say the landlord and tenant together must inspect the condition of the rental unit at the start of the tenancy and at the end of a tenancy.

(a) on or after the day the tenant starts or ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

Consequences for tenant and landlord if report requirements not met

Section 24 and Section 36 say the right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with sections 23(2) and 35 (2)[2 *opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with sections 23 (2) and 35 (2) [2 *opportunities for inspection*],

(b) having complied with sections 23 (2) and 35 (2), does not participate on either occasion, or

(c) having made inspections with the tenant, does not complete the condition inspection reports and give the tenant a copy of it in accordance with the regulations.

I find that the Landlord did not complete the move in condition inspection report or the move out condition inspection report; consequently under sections 24 and 36 of the Act the Landlord's claim against the Tenants' security deposit is extinguished. I dismiss the Landlord's application to retain the Tenant's security deposit for compensation for damage or loss to the unit.

As well I find that the Landlord has not established the state or condition of the rental unit at the start of the tenancy therefore it is not possible to determine if the Tenants caused any damage or loss to the unit or how much damage or loss the Tenants may have caused. As a result I find that the Landlord has not established grounds to prove that the Tenants solely caused any damage or loss to the rental unit beyond normal wear and tear. The Landlord's application for compensation for damage or loss to the rental unit under the Act, regulations or tenancy agreement is dismissed without leave to reapply.

With regard to the Tenant's moving out date there was contradictory testimony and no evidence provided. The Tenant said they moved out on April 30, 2011 and the

Landlord said the Tenant moved out on May 1, 2011. In cases where it is just the Applicants word against the Respondents word the burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met. I find the Landlord has not meet the burden of proof in regards to when the Tenant moved out date and as such I dismiss without leave the Landlord's claim for compensation for her hotel costs for the night of April 30, 2011.

As the Tenants were successful in this matter I further order the Tenants to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 67 a monetary order for \$600.00 representing the Tenants security deposit of \$550.00 and the filing fee for this proceeding of \$50.00 will be issued to the Tenants.

I further find the Landlord is responsible for the filing fee of \$50.00 for her application that she has already paid.

Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, I grant a Monetary Order for \$600.00 to the Tenants. The order must be served on the Respondent and is enforceable through the Provincial Court of British Columbia (small claims court) as an order of that court.

The Landlord's application is dismissed without leave to reapply and the Landlord is ordered to bear the \$50.00 cost of her application which she has already paid.

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*.

Residential Tenancy Branch