



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the Landlord: MNSD, MNDC, FF,
For the Tenants: MNSD

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for a monetary order for compensation under the Residential Tenancy Act (the "Act") and the tenancy agreement, to retain part of the security deposit and to recover the filing fee for the Application.

The Tenants applied for a monetary order for a return of their security deposit.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Are the Tenants entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Background and Evidence

The tenancy agreement stated that this was a one year, fixed term tenancy, beginning August 15, 2007. However, the term of the tenancy agreement ended the tenancy on July 15, 2008, making the fixed term 11 months. The tenancy continued thereafter on a month to month basis, until it ended on May 15, 2011, according to the Landlord, and on May 14, 2011, according to the Tenant. The ending monthly rent was \$2,860.00 and the Tenants paid a security deposit of \$1,400.00 on August 1, 2007.

The rental unit was a single family dwelling.

Landlord's Application

The Landlord's monetary claim is for damages as follows:

Lawn mowing	\$85.00
Power washing	\$120.00
Light replacement	\$26.11
House cleaning	\$237.50
Light fixture replacement	\$9.99
HST	\$57.45
Filing fee	\$50.00
TOTAL	\$586.05

The Landlord's relevant evidence included photos of the rental unit, a Notice of Final Opportunity to Schedule a Condition Inspection, a document showing the price of a light fixture, an estimate for blind cleaning, a copy of a letter from the Tenants providing their forwarding address, dated and sent via mail May 16, 2011, a timeline of events dated May 20, 2011, the tenancy agreement, an invoice for power washing, a receipt for light bulb replacements, and a condition inspection report.

In support of her application, the Landlord testified that under the tenancy agreement and the Act, the Tenants agreed to and were obligated to provide lawn care; however, the Tenants failed to cut the grass upon vacating the rental unit.

Additionally, as per the addendum, the Tenants were to keep the property according to local standards, but did not, according to the Landlord, which caused the Landlord to incur a loss for power washing the outside surfaces of the house.

The Landlord stated that the Tenants left the rental unit unclean, which required general cleaning, blind cleaning and garbage removal. Additionally, the Landlord was required to replace a light fixture and replace 18 light bulbs, although she is claiming only for the cost of replacing 12 light bulbs.

As to a condition inspection on May 14th, the Landlord testified the Tenants appeared late, and at that time she informed him there would probably be deductions from their security deposit. The Landlord submitted that due to this, the Tenants would not sign the inspection report.

Upon query, the Landlord agreed that she had not returned any portion of the Tenants' security deposit.

I note that even though the Landlord's written submission stating that the meeting of May 14, 2011, with the Tenants was a final inspection and that the Tenant left the premises without signing the document, the Landlord contended a final inspection was not completed, as per her submission of a document labelled "Notice of Final Opportunity to Schedule a Condition Inspection."

There was no clear testimony or evidence to which address the Final Opportunity for an inspection on May 16, 2011, was delivered as the Tenants had already vacated the rental unit and left the country.

In response, the Tenant testified, stating that the lawn was mowed on May 13, 2011, one day before the Tenants moved out of the rental unit. Additionally the Tenant testified that they hired someone to mow the lawn, and that he did so bi-weekly throughout the tenancy.

The Tenant denied agreeing to power wash the house, and stated that that was the responsibility of the Landlord.

The Tenant stated that all the light fixtures were working when they vacated the rental unit.

As to the state of cleanliness, the Tenant testified that they left the rental unit in equal or better shape than when they moved in, as the Tenants had to hire a cleaning company at that time. The Tenant further submitted that the rental unit was cleaned thoroughly from top to bottom and denied that it needed further cleaning.

The Tenant stated that there was confusion as to the time of the final inspection, and that they arrived at the time they believed the meeting was set.

The Tenant stated that the Landlord was screaming and yelling at the Tenants at the final inspection and she confirmed that the inspection of May 14, 2011, was the final inspection.

Tenants' Application:

The Tenant contended that the inspection of May 14, 2011, was the final inspection of the premises. The Tenant submitted that the premises were clean on that date and due

to this, the male Tenant was upset when informed the Landlord would be making deductions, therefore refusing to sign the document.

The Tenant stated that the Landlord was provided their written forwarding address in a letter dated and posted on May 16, 2011. The Landlord confirmed this date.

The letter contained a request for a return of their security deposit and reiterated that they did not agree to any deductions from their security deposit.

The Tenant submitted that the Landlord has not returned any portion of the Tenants' security deposit.

The Tenant stated that the Landlord never sent them a copy of the inspection report, until it was received in the hearing package.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlord's Application:

Sections 23 and 35 of the Act require the landlord and tenant to inspect the condition of the rental unit at the start and end of the tenancy and state that the landlord must complete a condition inspection report in accordance with the Act and regulations. This requirement is not discretionary. [Emphasis added]

Sections 24 and 36 of the Act state that the rights of a landlord to claim against the security deposit for damages is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Residential Tenancy Branch Regulation # 17 states that, among other things, a condition inspection report must contain the move-in inspection date, the move out date, the move out inspection date, signatures of the parties and a statement of the condition of the rental unit.

In reviewing the Condition Inspection Report submitted by the Landlord, I find the condition inspection report to be deficient for purposes of compliance with the Act as the Landlord failed to provide a move-in inspection date, a move-out date and a move-out inspection date. Further, the Landlord did not list the condition of the rental unit at the end of the tenancy, nor did she sign it. Based on the Landlord's failure to comply with the Act, I therefore find that the Landlord's right to claim against the Tenants' security deposit for damages has been extinguished for failure to properly complete the condition inspection report.

As I have found the Landlord lost her right to claim against the Tenants' security deposit for the damages listed in her application, I **dismiss** her application, **without leave to reapply**.

As I have dismissed the Landlord's application, I decline to award her the filing fee.

Tenants' Application:

As I have dismissed the Landlord's application, I find the Tenants are entitled to a return of their security deposit, which is held in trust by a landlord for a tenant.

Residential Tenancy Branch Policy Guideline 17 states that, if the tenant has not specifically waived a doubling of the security deposit, "The arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage

to the rental unit and the landlord's right to make such a claim has been extinguished under the Act." [Emphasis added]

As I have found the Landlord's right to claim against the Tenants' security deposit was extinguished, I grant the Tenants' application and I find the Tenants' have established a **monetary claim** in the amount of **\$2,871.99**, comprised of their security deposit of \$1,400.00, doubled, interest on \$1,400.00 of \$21.99 and the filing fee of \$50.00, which I have awarded them per section 72 of the Act for their successful application.

Conclusion

The Landlord's application is dismissed without leave to reapply.

I grant the Tenants' application and have issued a monetary Order for the sum of **\$2,871.99**.

I am enclosing a monetary order for **\$2,871.99** with the Tenants' Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the Landlord fail to comply with this monetary order.

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: September 07, 2011.

Residential Tenancy Branch