



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application filed May 25, 2011: MND; FF

Tenant's application filed August 5, 2011: DRI; MNDC; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Landlords seek a Monetary Order for damages to the rental unit and compensation for damage or loss under the Residential Tenancy Act (the "Act"); and to recover the cost of the filing fee from the Tenant.

The Tenant seeks to dispute an additional rent increase; compensation for damage or loss under the Act; for return of the security deposit; and to recover the cost of the filing fee from the Landlords.

Both parties gave affirmed testimony at the Hearing.

The Landlords testified that they served the Tenant with their Notice of Hearing documents and copies of the Landlords' documentary evidence, by registered mail sent on May 25, 2011. The Landlords provided a copy of the registered mail receipt and tracking number. The Tenant acknowledged receipt of these documents.

The Tenant testified that she served the Landlords with her Notice of Hearing documents, by registered mail sent on August 16, 2011. The Tenant provided a copy of the registered mail receipt and tracking number.

The Tenant testified that she did not serve the Landlords with copies of her documentary evidence. I advised the Tenant that I could not consider evidence that has not been provided to the other party, and invited her to provide me with her oral testimony with respect to that evidence.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary award against the Tenant pursuant to the provisions of Section 67 of the Act?
2. Did the Landlords impose an illegal rent increase?
3. Is the Tenant entitled to return of her security deposit in pursuant to the provisions of Section 38 of the Act?

4. Is the Tenant entitled to be reimbursed for the cost of installing an alarm system at the rental unit?

Background and Evidence

There was no written tenancy agreement between the parties, however the parties agree on the following facts:

- The tenancy started on November 1, 2005.
- The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy. The Tenant gave the Landlords permission to apply the security deposit towards damage caused by the Tenant to the siding of the house.
- The tenancy ended on June 30, 2010.
- At the beginning of the tenancy, the Tenant paid rent in the amount of \$650.00 per month. At the end of the tenancy, the Tenant paid rent in the amount of \$825.00 per month.
- There were no Condition Inspection Reports completed at the beginning or the end of the tenancy.

Regarding the Landlords' claim, the Landlords provided the following testimony:

The Landlords testified that the Tenant broke a toilet in the rental unit. The Landlords testified that the toilet was approximately 24 years old. The Landlords seek to recover the cost of replacing the toilet, in the amount of \$174.66. The Landlords provided a copy of the receipt for the new toilet.

The Landlords testified that the Tenant shampooed all of the carpets with the exception of the carpet on the outside deck. The Landlords seek to recover the cost of shampooing the carpet in the amount of \$50.00. The Landlords provided a copy of a receipt in support of this claim.

The Landlords testified that the Tenant changed the hardware on some doors, drilling holes and installing dead bolts without the Landlords' permission. They testified that the Tenant removed the deadbolts when she moved out of the rental unit. The Landlords seek to recover the cost of replacing doors and hardware in the amount of \$712.82. The Landlords provided a receipt in evidence.

The Landlords testified that the Tenant did not return the keys to the rental unit until July 21, 2010, so they had to rekey all of the house keys. The Landlords seek to recover this cost in the amount of \$220.00. The Landlords provided a receipt on evidence.

The Landlords also seek to recover the cost of photocopies, developing photographs, and registered mail in the total amount of \$26.31.

Regarding the Landlords' claim, the Tenant provided the following testimony:

The Tenant testified that she paid a house cleaner to come in and clean the rental unit at the end of the tenancy and that she fixed everything her children had damaged.

The Tenant acknowledged that the toilet tank cover cracked when she was attempting to fix the toilet, but denied breaking the toilet bowl. The Tenant submitted that the toilet was probably much older than 24 years because it was green, which is a colour that was not mass produced in 1986. The Tenant testified that the Landlords told her that they would be renovating the bathrooms.

The Tenant testified that she paid to have all of the carpets shampooed at the end of the tenancy, but that the carpet cleaners pocketed \$50.00 and did not indicate that they had cleaned the outside deck carpet on their invoice.

The Tenant stated that the Landlord gave her permission to put deadbolts on the doors because they were going to replace them at the end of the tenancy. She testified that she had left all the deadbolts in the doors, with all of the keys. She stated that she discovered she still had a key to the rental unit on July 18, 2010, and that she returned it immediately.

The Tenant submitted that the Landlords were attempting to have her pay for some of their renovations.

Regarding the Tenant's claim, the Tenant provided the following testimony:

The Tenant testified that the Landlords increased her rent illegally three times over the term of the tenancy. She stated that she paid the increases because she did not know until recently that they were not imposed in accordance with the provisions of the Act. The Tenant testified her rent went up to \$715.00 from \$650.00 on June 1, 2008; to \$775.00 from \$715.00 on June 1, 2009; and to \$850.00 from \$715.00 on June 1, 2010. The Tenant seeks to recover \$2,625.00 in rent overpayments.

The Tenant testified that she paid for and installed an alarm system at the rental unit, which she left at the rental unit. She seeks to be reimbursed for this improvement. The Tenant testified that the alarm system cost \$1,000.00

Regarding the Tenant's claim, the Landlords provided the following testimony:

The Landlords testified that rent was not increased from 2005 until 2008, and that they were unaware they had to provide a Notice of Rent Increase on the prescribed form, or that they could not increase the rent in 10% increments. The Landlords submitted that the Tenant paid the rent increases without disputing them and that therefore she agreed to pay the increases.

Analysis

Each party has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss requires the applicant to satisfy four different 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 respondent in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Regarding the Landlords' application

Residential Tenancy Policy Guideline #37 sets the approximate useful life of various items. Toilets are considered, generally, to have a useful life of 20 years. The Landlords testified that the toilet was 24 years old, the Tenant stated it was probably older. I find that the toilet had outlived its useful life and that the crack in the tank and the bowl were probably due to normal wear and tear. Tenants are not responsible for normal wear and tear and this portion of the Landlords' claim is dismissed.

The Landlords did not cause Condition Inspection Reports to be prepared at the beginning or the end of the tenancy, contrary to the requirements of Sections 23 and 35 of the Act. I find that the Landlords did not provide sufficient evidence that the porch carpet was not cleaned by the Tenant, or any evidence that the Landlord paid \$50.00 to shampoo the carpet. This portion of the Landlord's claim is dismissed.

The Tenant disputes the Landlords' allegation that she removed the deadbolts from the doors. The onus is on the Landlord to prove their claim and I find there is insufficient

evidence that the doors were not whole at the end of the tenancy (for example, a Condition Inspection Report). This portion of the Landlord's claim is dismissed.

The Tenant agreed that she did not return all of the keys to the rental unit at the end of the tenancy. Section 37(2) of the Act requires tenants to return all of the keys to the rental unit at the time they vacate the rental unit. The Landlords provided a copy of the locksmith's invoice in evidence. I find that the Landlords have established this portion of their claim in the amount of **\$220.00**.

The cost of photocopying, registered mail and developing photographs are costs that are not provided for in the Act. This portion of the Landlord's application is dismissed.

Regarding the Tenant's application

Section 41 of the Act states that a landlord must not increase rent, except in accordance with the provisions of the Act. Section 42 of the Act provides that a notice of a rent increase must be in the approved form, and must be given to the tenant at least 3 months before the effective date of the increase. Section 43 of the Act states:

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

In this case, the Landlords did not provide the Tenant with a Notice of Rent Increase in the approved form and increased the rent in an amount greater than allowed under the regulations. The Tenant did not agree in writing to the increase, and therefore I find that

the Landlords collected rent that does not comply with the Act and the regulations and the increases are not valid. I allow this portion of the Tenant's claim, calculated as follows:

Amount of overpayment from Jun/08 – May/09 (\$65.00 x 12)	\$780.00
Amount of overpayment from Jun/09 – May/10 (\$125.00 x 12)	\$1,500.00
Amount of overpayment from Jun/10 (\$200.00 x 1)	<u>\$200.00</u>
TOTAL overpayment	\$2,480.00

I dismiss the Tenant's claim for compensation with respect to the alarm system. The Tenant did not provide sufficient evidence of the installation or the cost of installation or that she had installed the alarm.

The Tenant agreed that she had allowed the Landlords to apply the security deposit towards damages to the siding, and therefore her application for return of the security deposit is dismissed.

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

I hereby set off the Landlords' award against the Tenant's award and provide the Tenant with a Monetary Order against the Landlords in the amount of **\$2,260.00** (\$2,480.00 - \$220.00).

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$2,260.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (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*.

Dated: September 09, 2011.

Residential Tenancy Branch