



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNC, MNR and FF

Introduction

This application was brought by the tenants on September 16, 2011 seeking monetary award for return of their security and pet damage deposits, loss or damage under the legislation or rental agreement, reimbursement for emergency repairs and recovery of the filing fee for this proceeding.

As a preliminary matter, I note that the tenants have named two principals of the corporate landlord as respondent whereas the rental agreement is with the corporate landlord. Therefore, with consent of the parties, I have amended the style of cause accordingly.

Issue(s) to be Decided

This matter requires a decision on whether the tenants are entitled to a Monetary Order for return of the deposits and whether those amounts should be doubled, compensation for the emergency repairs and loss or damage.

Background, Evidence and Analysis

This tenancy began on April 1, 2009 and ended in May 2011, the exact date of which is in question as the tenants did not give written notice. Verbal notice was given in April and the parties conducted the move-out condition inspection on May 11, 2011. According to the rental agreement, rent was \$1,050 per month and the landlord holds a security deposit of \$500 and a pet damage deposit of \$200 paid on April 1, 2009.

As a matter of note, this tenancy was the subject of a hearing on September 6, 2011 on the landlord's application for unpaid rent and damage to the rental unit and authorization to retain the security and pet damage deposits in set off.

While that application was made on time, it was dismissed when the applicant landlord failed to appear and the respondents did.

The landlord made explanation in the present hearing that he had not attended that hearing due to the tragic death of a close friend on or about the day of the hearing. However, the landlord did not make application for a Review Hearing within the 15 days of receipt of the decision as permitted under section 80 of the *Act*. Therefore, that decision to dismiss stands.

In the present matter, the tenants have submitted the following claims on which I find as follows:

Return of security and pet damage deposits in double - \$1,400. The tenants submitted a written copy of their forwarding address provided to the landlord on May 11, 2011. Section 38(1) of the *Act* provides that, within 15 days of the latter of the end of the tenancy or receipt of the tenants' forwarding address, the landlord must either return the deposits or make application to make claim upon them. Failure to do so compels a ruling that the deposits be returned in double under section 38(6) of the *Act*. While the landlord did make timely application, it was dismissed without leave to reapply for non-attendance, a decision that remained undisturbed when the landlord did not apply for a review hearing within the 15 days allowed under section 80 of the *Act*. Therefore, I find that the tenants are entitled to an award of \$1,400 as claimed.

Shower control not working throughout tenancy - \$1,250. The tenants gave evidence, supported by a photograph, showing that one shower/tub tap did not have a handle on it in the two and one-half bath rental unit. The landlord stated that he had not been aware of the problem and submits that it is his practice to respond to reported deficiencies quickly. In the absence of written notice from the tenants to the landlord, I dismiss this claim as the claimants have not met the burden of proof.

Dishwasher broken for one year and tenant's claim for installation - \$800. This claim is comprised of \$600 for loss of use of the dishwasher and \$200 for the male tenant having done the installation. The landlord stated that the replacement dishwasher had been ordered shortly after he became aware of it and the female tenant assured him that the male tenant was both willing and competent to do the installation himself. Again, in the absence of written notice to the landlord of the need for repair, I find that tenants have not met the burden of proof and the application is dismissed.

Rat extermination, cleanup and prevention - \$600. The tenants submitted photographs of rats in traps as evidence of an infestation. The landlord stated that on hearing of the problem, arrangements were made to have a pest control company deal with the problem and he submitted a paid invoice dated April 4, 2010. The tenants stated that they had emptied traps and sealed holes in the rental unit. The landlord stated that the pest control service person had noted that garbage around the property and the near proximity of a chicken farm were contributing factors to the problem. Section 32 of the *Act* which sets out a landlord's duty to maintain a rental property tempers that requirement with consideration of the age, character and location of the rental unit. Given the location of the rental unit next to a chicken farm, the landlord's proven response, and absent written notification to the landlord, I dismiss this claim.

Cleanup of mould - \$250. This claim is dismissed on the grounds that I accept the landlord's evidence that the landlord cleaned up the mould shortly after being advised and in the absence of written notice to the landlord.

Cost of cancelling cheques - \$12.50. The tenants claim this amount for cancelling post dated cheques not returned by the landlord. Given that the tenants had not paid the rent for May 2011, I decline to consider an award on this claim.

Filing fee - \$50. As the application has succeeded on the primary issue of return of the security and pet damage deposits, I find that the tenants are entitled to recover the filing fee for this proceeding from the landlord.

In total, I award the tenants \$1,450, comprised of \$700 for return of the security and pet damage deposits in double plus \$50 for recovery of the filing fee

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for \$1,450, enforceable through the Provincial Court of British Columbia for service on the landlord.

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: December 02, 2011.

Residential Tenancy Branch