



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF / MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; ii) by the tenant for the double return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on July 1, 2011. Monthly rent of \$850.00 was payable in advance on the first day of each month, and a security deposit of \$425.00 was collected. A move-in condition inspection and report were completed with the participation of both parties at the start of tenancy.

By letter dated October 1, 2011, the tenant gave notice to end the tenancy, and he vacated the unit on October 31, 2011. The landlords issued a "Notice of Final Opportunity to Schedule a Condition Inspection," proposing that the move-out condition inspection be conducted at 9:30 a.m. on October 31, 2011. The landlord testified that she knocked on the unit door at 9:30 a.m. but nobody answered. The tenant testified that he was home all day and that the landlord did not appear. Ultimately, the landlord completed a move-out condition inspection and report in the absence of the tenant on November 1, 2011.

The landlords testified that new tenants were found for the unit effective November 1, 2011.

There is more than one account of how and when the tenant informed the landlords of his forwarding address. The most conclusive evidence, however, appears to be a letter from the tenant to the landlords which the landlord testified that he received on November 1, 2011. The landlords' application for dispute resolution was filed on November 14, 2011.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and the testimony of the parties, aspects of the respective applications and my findings around each are set out below.

TENANT

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that the tenancy ended on October 31, 2011. I find on a balance of probabilities that the tenant's forwarding address was received in writing by the landlords on November 1, 2011. Accordingly, as the landlords' application was filed within 15 days after receipt of the tenant's forwarding address, I find that the tenant's application for the double return of the security deposit must be dismissed.

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenant's claim for costs arising from registered mail is hereby dismissed.

LANDLORDS

Section 35 of the Act speaks to **Condition inspection: end of tenancy**, and section 36 of the Act addresses **Consequences for tenant and landlord if report requirements not met**.

As the landlords undertook to serve the tenant with a “Notice of Final Opportunity to Schedule a Condition Inspection,” I find on a balance of probabilities that the landlord did attend the unit at 9:30 a.m. on October 31, 2011 for the purpose of conducting a move-out condition inspection & report and that, for whatever reason(s), the tenant did not appear at the door when the landlord knocked. Accordingly, I find that the landlord’s right to claim against the security deposit has not been extinguished.

The landlords have applied to recover the following costs:

\$42.56*: rekey locks & keys. Evidence in support of this aspect of the application includes a receipt. On a balance of probabilities I find that the tenant did not return the keys to the landlords in a timely fashion, and that the landlords have established entitlement to the full amount claimed. Related to this aspect of the claim, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

\$70.00: labour to repair fence (2 hours x \$35.00 per hour). The landlord testified that he himself completed the subject labour. However, in the absence of any photographic evidence of damage to the fence, or of any mention of a damaged fence on the move-out condition inspection report, this aspect of the application is hereby dismissed.

\$50.00*: labour to clean within the unit (2 hours x \$25.00 per hour.) The landlord testified that she herself completed the subject labour. This aspect of the application is supported by photographic evidence as well as mention on the

move-out condition inspection report of garbage bags, and “need to be clean” (bathroom cabinets and mirror). I find on a balance of probabilities that the landlords have established entitlement to the full amount claimed.

\$387.00: *estimated cost of labour and materials for repair of certain miscellaneous damages.* The landlord testified that repairs to the damages described in the application have not actually been undertaken, however, this does not appear to have prevented new renters from taking possession effective November 1, 2011. In the absence of any cost having been incurred in relation to this aspect of the application, and in the absence of evidence that any need for repairs delayed the landlords’ ability to find new renters effective immediately after the end of this tenancy, this aspect of the application is hereby dismissed.

Total: \$92.56.

I find that the landlords have established an entitlement in the amount of \$92.56, as set out above. I hereby order that the landlords retain this amount from the security deposit of \$425.00, and I order the landlords to repay to the tenant the balance of \$332.44 (\$425.00 - \$92.56)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$332.44**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court, and enforced as an order of that Court.

As both parties have benefited in some measure from their applications, the respective applications to recover the filing fee are hereby dismissed.

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: January 31, 2012.

Residential Tenancy Branch