



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD FF
 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 damage to the unit, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order for the return of double her security deposit, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Is this a Landlord and Tenant relationship, if so when did it begin?
2. If so, has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
3. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach pursuant to section 67 of the *Residential Tenancy Act*?
4. Have the Landlords breached the *Residential Tenancy Act*, regulation or tenancy agreement?
5. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant affirmed that she moved into the rental unit as of May 1, 2008, paid \$212.50 as security deposit and rent directly to HM, as HM advertised the room and brought the Tenant in as a roommate. HM passed away in the rental unit near the beginning of April 2009 and at that time the Tenant had a conversation with the male Landlord and confirmed she would be taking over the tenancy.

There was one other occupant residing in the unit at that time and the Tenant explained to the Landlord that she would be renting out the other room as soon as possible and would ensure the \$1,000.00 rent was paid in full. All of the utilities were transferred into the Tenant's name after HM passed away.

HM's mother lived out of town and resided in the rental unit when she came to town to finalize HM's affairs. During the remainder of the tenancy several other people occupied the other two rooms and dealt directly with the Tenant paying rent and utilities, and the Tenant dealt directly with the Landlord ensuring rent and utilities were paid.

The parties agreed that no condition inspection report was completed at the time the Landlords purchased the house in 2004 or when the Tenant took over the tenancy in April 2009. No written notices to conduct a condition inspection report were issued, no final notice of inspection was issued, although the female Landlord offered to conduct an inspection verbally. They also agreed the Tenant returned the keys and provided the Landlords with her forwarding address in writing on October 2, 2011.

The Landlord and Tenant agreed that they had a meeting with HM's mother after HM passed away and that even though the Landlord offered to pay HM's mother for the return of the security deposit they decided that because the Tenant had paid HM \$212.50 as a security deposit already that she would pay HM's mother the balance of \$212.50 directly. This was easier than having the Landlord pay HM's mother \$425.00 as the security deposit refund and the Tenant then having to pay the Landlord the \$425.00 security deposit.

The parties further agreed the tenancy ended October 2, 2011 after the Landlords served the Tenant and other occupants with a 2 Month Notice to End Tenancy.

The Landlord affirmed that the occupants were in the habit of exchanging security deposits when they moved in and out amongst themselves so he did not really get involved in who paid who except when he had one tenant who was on income

assistance and his rent was paid directly to the Landlord from the Ministry of Social Development.

The Landlord confirmed he has not returned the \$425.00 security deposit to anyone, that he does not have an Order issued by the *Residential Tenancy Branch* giving him authority to keep the deposit, and he did not make his application to keep the deposit until December 06, 2011.

The Tenant is seeking the return of her security deposit of \$425.00, \$212.50 that was initially paid to HM and the balance of \$212.50 which was paid to HM's mother after her passing; plus \$15.00 interest on the deposit; plus \$100.00 for loss of wages for having to take a day off work to make her application for dispute resolution; \$40.00 for a shower curtain; plus her \$50.00 filing fee.

The Landlord is seeking costs relating to the following damages that occurred to the rental house which was built in 1978 and which he has owned since 2004:

- \$300.00 for cleaning the walls, oven, refrigerator, cupboards which is 15 hours at \$20.00 per hour
- \$34.00 for repairing the hallway louvered doors which includes \$17.00 materials plus \$17.00 labour. The Landlord does not know the age of these doors.
- \$980.00 as partial recovery of flooring as he had to replace all the flooring with new carpet and hardwood. He does not know the age of the flooring and stated that he "does not believe all of the damage was caused by the tenants who resided there since 2008".
- \$110.00 to replace the range hood which he purchased second hand at \$80.00 plus \$30.00 labour. He does not know the age of the previous hood fan as it was a used unit as well.
- \$40.00 labour to repair a hole in the wall in the front entrance.
- \$40.00 labour to clean out ashes from the fireplace.

The Landlord confirmed that he began cleaning and renovating the rental unit on October 1, 2011 after receiving permission from the one remaining occupant.

The Tenant provided the following response to the Landlord's claims:

- The rental unit was left cleaner at the end of her tenancy than what it was when she first moved in;

- The louvered doors were damaged when she moved in and she actually made the effort to repair them so they were in better condition at the end of the tenancy;
- All of the flooring was damaged when she first moved in and she informed HM that she was concerned about their condition at which time HM informed the Tenant that the Landlord did not complete a condition inspection at the time he purchased the house so she did not have to be concerned as the flooring was damaged prior to the Landlords purchasing the house and prior to the Tenant moving in;
- She has no knowledge of a range hood problem other than one knob had always been loose from the time she moved in;
- The hole in the drywall was there at the time she moved in and was too large for her to repair so she left it;
- She confirmed the fireplace probably had ashes in it when she moved out however it would have had ashes in it when she moved in.

Analysis

I have carefully considered the aforementioned and the evidence before me which included, among other things, a copy of HM's tenancy agreement dated July 8, 2002 which indicates a security deposit of \$425.00 was paid, photographs of the rental unit provided by Landlords, written statements from both parties, and a copy of flooring receipts from the Landlords dated September and October 2011.

The Act defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

An occupant is defined in the *Residential Tenancy Policy Guideline # 13* as follows: where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent, tenant, occupant) agree to enter into a tenancy agreement to include the new occupant as a tenant.

The parties agreed that during the meeting with HM's mother that the Tenant would pay HM's mother \$212.50 as the balance due of the \$425.00 security deposit and that the Landlord would retain the original \$425.00 security deposit as the deposit for the current tenancy.

Based upon the aforementioned and pursuant to section 62 of the Act, I find that the Tenant was an occupant from May 1, 2008 until early April 2009 when HM passed away and that she entered into a verbal tenancy agreement with the Landlord on approximately April 1, 2009. Rent was payable in the amount of \$1,000.00 and that effective April 1, 2009 the Landlord was in receipt of \$425.00 as the Tenant's security deposit. I further find that any interest owed on HM's security deposit from July 8, 2002 to March 31, 2009 is a matter between the Landlord and HM's estate and does not apply to the Tenant named in this dispute.

Landlords' application

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 24 (2) of the Act provides that the right of a 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 section 23 (3) [2 opportunities for inspection], (b) having complied with section 23 (3), does not participate on either occasion, or (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The evidence supports the Landlords did not complete a condition inspection report at the onset of the tenancy. According, I find the Landlords' right to claim against the security deposit has been extinguished and I dismiss their application to retain the security deposit.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy. In the absence of proof of the condition at the onset of this tenancy the only

evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet the Landlord's burden of proof. Therefore I dismiss the Landlord's claim for damages to the unit in its entirety.

The Landlord has not been successful with his application therefore he must bear the burden of the cost to file his claim.

Tenant's application

The evidence supports that the tenancy ended October 2, 2011, the Tenant paid \$425.00 as the security deposit as of April 1, 2009, the Tenant provided the Landlords with her forwarding address on October 2, 2011, and the Landlord filed his application for dispute resolution December 6, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than October 17, 2011.

The Landlords did not return the deposit and did not file their application until December 6, 2011, eight weeks past the due date.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the aforementioned, I find that the Tenant has met the burden of proof and I award her the return of double her security deposit plus interest from April 1, 2009 in the amount of **\$850.00** ($\$425.00 \times 2 + \0.00 of interest) pursuant to section 67 of the *Act*.

The Tenant has sought \$40.00 for the cost of a shower curtain however there is insufficient evidence to prove she purchased a shower curtain and at what cost. Therefore I dismiss her \$40.00 claim.

The Tenant seeks \$100.00 for lost wages to file her application. There is insufficient evidence to prove the Tenant was prevented from either filing her application over the internet, which is available 24 hours per day, or that she was unable to have an agent

act on her behalf to file the application; and there is insufficient evidence to support he Tenant lost \$100.00 in wages. Accordingly I dismiss the Tenant's claim for \$100.00.

I find that the Tenant has primarily succeeded with her application therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenant's decision will be accompanied by a Monetary Order in the amount of **\$900.00**. This Order is legally binding and must be served upon the Landlords.

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 04, 2012.

Residential Tenancy Branch