



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Tenants for the return of a security deposit and monetary compensation for loss or damage under the Act, regulations or tenancy agreement.

The Tenants said they served the Landlords with the Application and Notice of Hearing (the “hearing package”) by registered mail on November 10, 2011. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both the Landlords and the Tenants in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to the return of double the security deposit?
2. Is there loss or damage to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on June 15, 2011 as a fixed term tenancy with an expiry date of June 30, 2012. The tenancy ended September 30, 2011 by mutual agreement. Rent was \$3,500.00 per month payable in advance for three months at a time. The Tenant paid a security deposit of \$1,750.00 in the first part of June, 2011.

The Tenant said that he moved out of the rental unit on September 30, 2011 and gave the Landlord a forwarding address in writing on October 15, 2011. The Tenant said there was no move in or move out condition inspection reports completed. The Tenant continued to say that he cleaned the unit before leaving and he asked the Landlord for his deposit back. He said the Landlord said there were damages to the unit and there were items in the unit missing so the Landlord said he would not give him the security deposit back.

The Landlords said they submitted as evidence a list of missing items and repairs that they replaced and repaired after the Tenant moved out. The Landlords said they felt that the missing items and repairs were due to damage the Tenants caused during the

tenancy. The Landlord said the loss and damages includes missing bedding, linens, quilts, repairs to the carpet, repairs to furniture, repairs to walls, the deck and fence. The Landlord said the total cost of replacing and repairing items is \$2,228.00. The Landlord said they did not make an application for these losses or damages, but they retained the Tenants' security deposit as compensation for their losses.

The Landlord said he did receive a forwarding address in writing from the Tenants with the hearing package which was mailed November 10, 2011. Section 90 of the Act deems the forwarding address of the Tenants was received on November 15, 2011, 5 days after mailing the package by registered mail. The Landlords continued to say they did not return the deposit or make an application with the *Residential Tenancy Branch* to retain the security deposit for damages to the rental unit.

Further the Landlord said the written mutual agreement to end the tenancy says the Landlord was entitled to keep the October prepaid rent of \$3,500.00 due to the early end of tenancy and the Landlord was entitled to deduct the October utilities from the November, 2011 rent prepayment. The Landlords said they deducted \$812.00 from the November, 2011 prepaid rent and returned \$2,688.00 to the Tenants. The Tenant confirmed receiving the return of part of the November, 2011 rent in the amount of \$2,688.00. The Tenant said he questioned the amount of the deduction for utilities as he did not have a statement that verified the amount of the deductions. The Tenant said he did agree that he would pay the utility bill for October, 2011 and the previous monthly utility bills were in the \$800.00 range.

The Tenant said he had made additional claims for the a free month rent and for penalties for the Landlord not renting the unit again, but the Tenant said he understood these claims were not valid, because he made a mutual agreement to end the tenancy with the Landlord in writing. As a result the Tenant said their claim is for double the security deposit returned in the amount of \$3,500.00 and the October, 2011 utilities in the amount of \$812.00.

The Tenant said he cleaned the unit before he left and he believes that there were no damages to the unit and there were no lost items that the Landlords are claiming.

The Landlords said this was a difficult experience for them and as new landlords they did not know all the responsibilities of being a landlord. The Landlords continued to say they tried to settle this dispute between themselves and the Tenants, but the Tenants did not respond to their efforts.

Analysis

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the Tenants did give the Landlord a forwarding address in writing that was deemed to be received on November 15, 2011. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution. Consequently I find for the Tenant and grant an order for double the security deposit of \$1,750.00 in the amount of $\$1,750.00 \times 2 = \$3,500.00$.

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Further, although the Landlord has not provided verification of the utility bills for the October, 2011 and the Landlords did not fax in the written mutual agreement to end the tenancy, that include payment of the October, 2011 utilities, I find that because both the Landlords and Tenant gave affirmed testimony that they agreed that the Tenants would pay the October utilities and the Tenant said the utility bills were normally approximately \$800.00 per month, I find the Tenants have not established grounds to receive compensation for the return of the October, 2011 utilities in the amount of \$812.00. The Tenants' claim for the return of the October, 2011 utilities in the amount of \$812.00 is dismissed without leave to reapply.

As the Tenant was partially successful in this matter I further order the Tenant to recover the filing fee of \$50.00 for this proceeding from the Landlord. Pursuant to section 38 and 67 of the Act a monetary order for \$3,550.00 will be issued to the Tenant. This Monetary order represents double the security deposit in the amount of \$3,500.00 and the filing fee of \$50.00.

Conclusion

I find in favour for part of the Tenant's monetary claim. Pursuant to sections 38 and 67 of the Act, a Monetary Order for \$3,550.00 has been issued to the Tenants. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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*.

Dispute Resolution Officer