

DECISION

Dispute Codes:

Landlords' application: MNSD; MNDC; FF

Tenant's application: MNSD; FF

Introduction

This Hearing was first convened on December 16, 2011, and adjourned in order to allow both parties to resubmit their documentary evidence to each other. These are cross applications. The Tenant seeks compensation in the amount of double the security and pet damage deposits; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a Monetary Order for compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); to apply the security and pet damage deposits towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

Both of the parties signed into the teleconference and gave affirmed testimony at the Hearing.

Issues to be Decided

1. Are the Landlords entitled to compensation for the Tenants ending the tenancy before the fixed term and for damages to the rental unit, pursuant to the provisions of Section 67 of the Act?
2. Are the Tenants entitled to compensation in the amount of double the security deposit, pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

The rental unit is a single family dwelling. A copy of the first and second tenancy agreement were provided in evidence. The tenancy began on July 1, 2010. The parties signed an 11 month term lease which ended on May 31, 2011. The parties entered into a subsequent lease, commencing April 1, 2011, which was for a fixed term ending May 31, 2012. Monthly rent was \$1,500.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$400.00, on June 10, 2010.

On July 20, 2011, the Tenants e-mailed the Landlord DT, indicating that they would be ending the tenancy on August 31, 2011.

The Landlords provided the following testimony:

The Landlords testified that they were able to re-rent the rental unit effective September 1, 2011, at a monthly rent of \$1,450.00. The Landlords provided a copy of the new occupant's lease in evidence. The Landlords seek compensation in the amount of \$50.00 per month for the balance of the term of the Tenants' lease. They also seek \$24.49 for the cost of advertising and \$1,450.00 in property manager's fees.

The Landlords testified that the Tenants damaged the pantry door and a door handle was missing. The Landlords provided invoices in the amount of \$65.52 and \$42.66 for the cost of replacing the pantry door and the missing door handle.

The Landlords seek \$249.00 for the cost of painting the porch. They also seek \$336.00 for the cost of doing yard work, power washing the driveway, doing paint touch-ups and making repairs. They stated that they did not increase the rent when the second tenancy agreement was signed because the Tenants had indicated they were going to repaint the porch, but that the Tenants did not. The Landlords testified that the Tenants had agreed to perform the yard work, but that vines needed pruning and the lawn was not properly cut.

The Landlords testified that the Tenant's dog had left an odour in the house, and that the window tracks had to be cleaned. The Landlords seek \$104.00 for the cost of deodorizing the carpets and cleaning the window tracks.

The Landlords also seek to recover their costs for gas (\$40.00) and postage (\$27.08) from the Tenants.

The Tenants gave the following testimony

The Tenants submitted that the Landlords did not try hard enough to re-rent the house for \$1,500.00 and that they should not have to pay the difference in rent for the remainder of the term of the tenancy.

The Tenants did not dispute the Landlord's claim for the costs of replacing the door handle or replacing the pantry door. The Tenants acknowledged that they had left a closet door in the garage and that it had sustained some water damage. The Tenants stated that \$40.00 was a reasonable amount for them to pay to have it repainted.

The Tenants disagreed with all of the remainder of the Landlord's claim. They stated that they left the rental unit in reasonably clean condition, shampooed the carpets, mowed the lawn, and filled in some small nail holes in the walls.

The Tenants testified that they provided the Landlords with their forwarding address in writing on September 17, 2011, when they met with the Landlords to do an inspection

of the outside of the property. No inspection of the inside of the rental unit was performed at the end of the tenancy.

The Tenants seek an award of \$2,300.00, representing double the amount of the deposits, because the Landlords did not return their security deposit and pet damage deposit within 15 days of receipt of their forwarding address.

Analysis

The Tenants' application

The Tenants are claiming compensation in the equivalent of double the amount of the security and pet damage deposits, pursuant to the provisions of Section 38(6) of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

No interest has accrued on the security and pet damage deposits.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the deposits.

I accept the undisputed testimony of the Tenants that the Landlords received the Tenants' forwarding address in writing on September 17, 2011. The Landlords filed their Application for Dispute Resolution on September 27, 2011 and amended their Application on October 7, 2011. Therefore, I find that the Landlords made application for dispute resolution claiming against the security deposit within the 15 days allowed under Section 31(1) of the Act and that the Tenants are not entitled to compensation under Section 38(6) of the Act.

The Landlords' application

Both parties were given the opportunity to re-serve each other with their documentary evidence that they provided to the Residential Tenancy Branch prior to the December 16th Hearing. At the December 16th Hearing, both parties were advised that no other additional evidence would be accepted. Contrary to my instructions, the Landlords provided several pages of additional evidence in their resubmitted evidence package and it was not considered.

With respect to the Landlords' claim for damage or loss under the Act, the Landlords have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlords 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 Tenants 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 Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

This was a fixed term tenancy. During the fixed term neither the Landlords nor the Tenants may end the tenancy except for cause or by agreement of both parties. The fixed term expired May 31, 2012. The Tenants breached the tenancy agreement by ending the tenancy on August 31, 2011, without the Landlords' agreement. I find that the Landlords followed section 7(2) of the Act by taking steps (i.e. lowering the rent by \$50.00) in order to re-rent the rental unit for September 1, 2011. Therefore, I find that the Landlords are entitled to compensation in the amount of \$50.00 a month for the remaining 9 months of the lease, totalling **\$450.00**. This portion of their application is granted.

I am satisfied that the Landlords spent **\$24.49** in advertising costs in order to re-rent the rental unit and that this loss occurred as a result of the Tenants breaching the lease. Therefore this portion of their claim is also granted.

The Landlords also claim property management fees in the amount of \$1,450.00. The property manager's invoice indicates that this charge is for advertising the rental unit; interviewing prospective tenants; showing the rental unit; preparing a tenancy agreement for the new occupants; arranging for staff to clean the rental unit; ordering and delivering replacement parts; and preparing Application for Dispute Resolution. Most of these are administrative costs. There is no "liquidated damages" clause in the rental agreement. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages (administrative costs, advertising, etc.) payable in the event of a breach of the tenancy agreement. These damages must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that the Landlords are not entitled to the cost of the property manager's fees and therefore this portion of their claim is dismissed.

Based on the testimony of both parties, I find that the Landlords have established their claims in the amount of **\$65.63** and **\$42.68** for the costs of replacing the pantry door and the missing door handle.

The Landlords provided insufficient evidence that the parties agreed that the Tenants would paint the deck in exchange for lower rent. Residential Tenancy Policy Guideline #1 clarifies the responsibilities of landlords and tenants regarding maintenance, cleaning and repairs of residential property. Tenants are generally required to pay for repairs where damages are caused deliberately or as a result of neglect. Tenants are not responsible for reasonable wear and tear to the rental unit or residential property. There was no evidence that the Tenants deliberately damaged the deck or were neglectful with respect to the deck. Most tenants will put up pictures in their homes. The Tenants testified that the small nail holes were left by picture hooks. The Landlords submitted that the holes were as big as a thumb. Based on the photographs provided by the Landlord, I prefer the Tenant's testimony with respect to the size of the holes. I find that the picture holes were normal wear and tear and dismiss the Landlord's claim against the Tenants for the cost of paint touch ups. The Tenants submitted that \$40.00 was a reasonable amount to paint the damaged closet door. I grant the Landlords compensation in the amount of **\$40.00** for painting the closet door. The remainder of the Landlord's claim for painting the deck and walls is dismissed.

With respect to property maintenance, generally speaking a tenant who lives in a single family dwelling is responsible for routine yard maintenance. This includes cutting grass, clearing snow and a reasonable amount of weeding, when the tenancy agreement requires a tenant to maintain flower beds. The landlord is responsible for major projects, such as power washing, tree trimming, pruning and insect control. Based on the photographs provided in evidence, I find that the lawn was reasonably cut and that there was no unreasonable amount of weeds left at the end of the tenancy. Therefore, I dismiss the Landlords' application to recover \$336.00 from the Tenants for the cost of these items.

Section 37 of the Act requires a tenant to leave the rental unit in a reasonably clean condition at the end of the tenancy, undamaged except for reasonable wear and tear. Contrary to the provisions of Section 35 of the Act, the Landlord did not cause a move-out condition inspection of the interior of the rental unit to be done at the end of the tenancy. The Tenants testified that they shampooed the carpets and left the rental unit in reasonably clean condition at the end of the tenancy. Therefore, I find that the Landlord has not provided sufficient evidence to support their claim that the rental unit was not reasonably clean and I dismiss their claim for cleaning window/door sills and deodorizing the carpet.

The Landlords have established a monetary award, calculated as follows:

Loss of revenue for the remainder of the term	\$450.00
Cost of advertising	\$24.49
Cost of replacing pantry door	\$65.52
Cost of replacing missing door handle	\$42.66
Cost of painting closet door	<u>\$40.00</u>
TOTAL AWARD	\$622.67

Further to the provisions of Section 72 of the Act, the Landlords may deduct their award from the security and pet damage deposits. I order the Landlords to return the balance of the deposits to the Tenants forthwith, calculated as follows:

Security deposit paid	\$750.00
Pet damage deposit paid	<u>\$400.00</u>
Sub total	\$1,150.00
Less Landlord's monetary award	<u>-\$622.67</u>
Balance to the Tenants	\$527.33

I order that each party bear their own costs of filling their applications.

Conclusion

The Tenant's application for double the amount of the damage deposit and security deposit is dismissed.

The Landlords' application for a monetary award is granted in the amount of **\$622.67**.

I hereby provide the Tenants a Monetary Order in the amount of **\$527.33** representing return of the balance of the security and pet damage deposits. This Monetary Order must be served upon the Landlords and 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: January 23, 2012.

Residential Tenancy Branch