



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for a monetary order for damages, money owed or compensation due to damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The application by the tenants is for return of double the security deposit.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

The landlord at the start of the hearing requested an adjournment as she had only received quotes and not the final invoice from her tradesmen for the repairs required in the rental unit. The landlord's application was made March 14, 2012 and the landlord has had 2 months in which to gather and submit their evidence. The landlord's evidence package that was submitted was not received by this office until May 16, 2012 and is therefore late evidence. The tenant's when asked denied to have the matter adjourned. Based on the foregoing the landlord's request for an adjournment is denied.

Background and Evidence

This tenancy began May 2010 with monthly rent of \$2060.00 and the tenants paid a security deposit of \$1000.00. The tenants vacated the rental property February 29, 2012 and provided the landlord their forwarding address in writing on March 2, 2012.

The landlord testified that when the tenants vacated the rental unit the tenant did not complete repairs that were their responsibility and the landlord is seeking the cost of repairs to the bathroom which they believe was damaged by excessive condensation. The landlord stated that the window sill had to be repaired, the floor trim repaired, the ceiling repainted and the bathtub is damaged.

The landlord stated that a move in inspection was completed by the tenants without the landlord present and the new tenants completed their own move in inspection without the landlord present and the landlord is basing the move out condition on this report.

The tenants testified that the property was not in new condition when they took possession and the move in condition inspection report notes the carpet as old and dirty, the kitchen dirty and the counter top old, damaged trim in the bathroom, toilet seat scratched, stains on the bedroom carpet and that the fence needs repair, tree trimmings need to be removed and a piece of siding on the house is falling off. The tenants stated that the rental property is very old and the bathroom and kitchen have not been renovated for many years.

The tenants maintained that the kitchen counter was loose when they moved in, the bathtub chipped and the condensation issue normal wear and tear. The tenants commented that if the landlord had attended the move in inspection they would have had a better understanding of the condition of the rental unit.

The landlord in this application is seeking to retain the tenant's \$1000.00 security deposit as they do not know what the final cost for repairs will be.

Analysis

In relation to the landlord's claim for damages I find, pursuant to section 62(2) of the Act, that in the absence of any verification of the following costs claimed, that the claim for damages is dismissed without leave to reapply. The landlord's claim to keep all or part of the security deposit is also dismissed without leave to reapply as the landlord has not complied with section 23 and 24 of the Act and has therefore extinguished the right to make this claim.

The move out inspection was not completed by the landlord with or without the tenants present but was in fact completed by the new tenants without the landlord present. The landlord has also not provided any evidence of financial loss in regards to repairs that have been completed in the rental unit in relation to this tenancy. Accordingly the landlord's claim is dismissed in its entirety without leave to reapply.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

In regards to the tenant's application for return of the security deposit I find that the tenants are entitled to return of the original \$1000.00 security deposit. The tenants are not however entitled to return of double the security deposit as the landlord filed a claim against the security deposit within 15 days of receipt of the tenant's forwarding address.

Accordingly I find that the tenants are entitled to a monetary order for \$1000.00.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

Residential Tenancy Act **Section 23 Condition inspection: start of tenancy or new pet** speaks to:

- (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
 - (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) a previous inspection was not completed under subsection (1).*
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (6) The landlord must make the inspection and complete and sign the report without the tenant if*
 - (a) the landlord has complied with subsection (3), and*
 - (b) the tenant does not participate on either occasion.*

Residential Tenancy Act **Section 24 Consequences for tenant and landlord if report requirements not met**

- (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
 - (a) the landlord has complied with section 23 (3) [2 opportunities for inspection], and*
 - (b) the tenant has not participated on either occasion.*
- (2) 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.*

Residential Tenancy Act **Section 38 Return of security deposit and pet damage deposit** speaks to:

- (1) 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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) 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.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [service of documents] or give the deposit personally to the tenant.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I find that the tenants have established a monetary claim for \$1000.00 in return of the security deposit. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants a monetary order under section 67 for the amount of **\$1050.00**.

If the amount is not paid by the landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: May 17, 2012

Residential Tenancy Branch