



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, MNSD, FF
For the landlord: MND, MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of his security deposit, doubled, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss and damage to the rental unit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Is the landlord entitled to a monetary order pursuant to sections 38, 67 and 72 of the Act?

Background and Evidence

The tenant testified that he moved into the rental unit on March 1, 2011, with another tenant GK, that he vacated the rental unit on January 1, 2012, monthly rent was \$1550.00 and that a security deposit of \$780.00 was paid to the landlord.

The tenant submitted that the other tenant GK vacated the rental unit in August 2011, and that he, the tenant, stayed on, until the date he vacated. The tenant submitted the original security deposit was transferred on the tenant's behalf, that he made an

arrangement with the vacating tenant and that the landlord retained the security deposit for the tenant. I note that the tenant listed the incorrect amount of security deposit, \$720.00, instead of the \$780.00 as agreed upon in the tenancy agreement.

The tenant submitted that he asked the landlord's wife for a written tenancy agreement as he wanted to stay longer than August 31, but was told that a written document was not necessary.

After the original tenant vacated on August 31, 2011, the tenant continued to reside in the rental unit and paid the monthly rent.

The tenant submitted that when he paid rent on December 4, 2011, he informed the landlord's wife that he was vacating the rental unit on January 13, 2012.

The tenant stated that he gave his written forwarding address to the landlord on January 23, 2012.

The tenant's monetary claim is in the amount of \$1810.00, comprised of his security deposit of \$720.00, doubled, and \$370.00 for his repair of a floor in the rental unit, which he did not damage.

The landlord submitted that the tenant was not his tenant and that he had no obligation to this tenant.

When questioned, the landlord admitted that he was aware that the tenant lived in the rental unit, that he was aware that tenant GK moved out in August 2011 and that he accepted rent from the tenant throughout the remainder of the tenancy.

The landlord acknowledged that he was aware the tenant moved out on January 1, 2012 and that he received the tenant's written forwarding address, at the end of January. The landlord confirmed that he did not return the security deposit.

The landlord's monetary claim is in the amount of \$1930.00 comprised of \$100.00 for kitchen faucet replacement, \$60.00 for shower faucet repair, \$120.00 for cleaning, \$100.00 for shower curtain replacement and \$1550.00 for insufficient notice of moving out.

The landlord confirmed that there was no move out condition inspection report.

The landlord's relevant evidence included the tenancy agreement, copies of photos of the rental unit, a receipt for \$60.00 bathtub spout repair, a form of a move in condition inspection report and a fine letter from the strata council.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The first issue to address is whether or not a tenancy existed between the two parties. I find that when the landlord was aware the tenant lived in the rental unit, allowed the tenant to continue to reside in the rental unit and continued to collect rent until the tenant vacated, a tenancy was created.

Additionally, on one hand the landlord claimed the tenant was not his tenant, and on the other hand, claimed the tenant was financially responsible as being his tenant.

The landlord's argument that he had no landlord-tenant relationship with this tenant lacked merit and credibility and I find was argued on his part to avoid his responsibility to this tenant in dealing with the security deposit.

I further find that the landlord retained the security deposit of \$780.00 for this tenant.

As I have found that a tenancy existed, I next considered the parties' respective applications.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Tenant's application-

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 or make application for dispute resolution claiming against the security deposit. In this case, as the tenancy ended on January 1, 2012, and the landlord confirmed having received the tenant's forwarding address no later than January 31, 2012, the landlord was required to return the tenant's security deposit or file for dispute resolution no later than February 15, 2012. I find the landlord did neither.

Based on the above, I find that the tenant is entitled to a return of his security deposit, doubled, pursuant to Section 38(6) of the *Act*.

As to the tenant's claim for cost to repair a floor he did not damage, I find the tenant submitted insufficient evidence that he suffered a loss as a result of the landlord actions

and further, if the parties had an employment agreement for the tenant's labour, that agreement does not fall under the Residential Tenancy Act, but would be an issue for the Provincial Court (Small Claims) of British Columbia. I therefore dismiss the tenant's claim for \$370.00.

I find the tenant's application had merit and I award him recovery of his filing fee, in the amount of \$50.00.

I find the tenant has established a monetary claim in the amount of \$1610.00, comprised of his security deposit of \$780.00, doubled, and \$50.00 for the filing fee.

Landlord's application-

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

Section 36 of the Act extinguishes the right of the landlord to claim against the deposit for damages should the landlord fail to offer the opportunities for inspection.

In the absence of a condition inspection report depicting the state of the rental unit both before and after this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenant damaged or left the rental unit in an unclean state. A condition inspection could easily reveal such condition of the rental unit.

Additionally, I also find that the condition inspection report upon move in was not in the proper form as required by the Residential Tenancy Act and I therefore could not rely upon this document.

I therefore dismiss the landlord's claim for damages and cleaning, with the exception of \$60.00 for shower repair, due to the tenant's agreement that he owed this amount.

As to loss of revenue due to insufficient notice by the tenant, the landlord provided no evidence that he mitigated a potential loss of revenue by attempting to re-rent the rental unit. Further the landlord submitted insufficient evidence that he suffered a loss of revenue at all. I therefore dismiss the landlord's claim for loss of revenue for \$1550.00.

I find the landlord's application lacked merit and I have therefore declined to award the landlord recovery of the filing fee.

I find the landlord has established a monetary claim of \$60.00 for shower repair.

Conclusion

The tenant's monetary award of \$1610.00 is offset by the landlord's monetary award of \$60.00 and I therefore grant the tenant a monetary order in the amount of \$1550.00 pursuant to section 67 of the Act.

I am enclosing the monetary order for \$1550.00 with the tenant's Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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 07, 2012.

Residential Tenancy Branch