



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, MNSD, OLC, 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 her security deposit, a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Act 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, which includes her security deposit, and for recovery of the filing fee?

Is the landlord entitled to a monetary order and for recovery of the filing fee?

Background and Evidence

The tenancy began on March 1, 2011, monthly rent was \$2900.00 and the tenant paid a security deposit of \$1450.00 and a pet damage deposit of \$200.00, both on January 25, 2011.

The tenant stated that they moved out of the rental unit on March 26, 2012, and the landlord submitted the move out date was March 31, 2012.

Tenant's application-

The tenant's monetary claim is \$1648.23, which includes \$1650.00 for the security deposit and pet damage deposit, \$358.40 for an invoice from the tenant's company to the landlord, \$100.00 for a lock on the office door, for a total of \$2108.40. From this amount the tenant has deducted \$57.95 for a lock, \$46.67 for lock labour, \$150.00 for garbage removal and \$211.36 from a balance, for a new total of \$1642.42. To this amount, the tenant has added \$5.81 as the remaining utility bill from the basement suite tenant.

The tenant stated that they received an email from the landlord on January 15, 2012, informing the tenants that they had to vacate the rental unit by the end of March 2012, due to Landlord's Use of the Property as the owner wanted to move back into the house.

The tenant stated that as a result of receiving the emailed 2 Month Notice, even though the Notice was not the proper Residential Tenancy Branch ("RTB") form, the tenants vacated at the end of March 2012.

The tenant stated that the landlord received their written forwarding address on March 26, 2012, in an email, to which the landlord sent an acknowledgement email.

The tenant stated that the landlord has not returned their security deposit or pet damage deposit.

The tenant's claim for \$358.40 was for her time in showing and assisting in re-renting the basement suite.

The claim for a lock was due to the tenants purchasing a lock and keyless entry touch pad for the rental unit.

The tenant deducted the amount of her original claim, as noted above, due to funds the landlord paid the tenants, which had not yet been satisfied. The tenant also submitted that although they had been reimbursed for most of the utilities used by the basement tenant, the amount of \$5.81 was still owed.

The tenant's relevant evidence included the tenancy agreement and multiple email transmissions between the parties.

In response, the landlord at first denied receiving the tenants' email notice of their forwarding address on March 26, then when asked about the tenant's clear evidence showing her response on that day, the landlord then admitted receiving it after all.

The landlord confirmed that she has not returned the tenants' security and pet damage deposits, and when questioned, stated that she was not sure if a move-out condition

inspection report had been completed as she did not represent the owner at that time. I note that there has been no condition inspection reports entered into evidence.

The landlord stated that she did not owe the tenant for showing the basement suite, as this was a mutual decision between the owner and the tenants to assist.

As to the locks, the landlord stated that tenants did not have permission to change or install a lock.

Landlord's Application-

The landlord monetary claim is \$1084.89, for damages to the rental unit.

In support of her application, the landlord submitted that she hired a contractor to repair scratches to the hardwood floor, which cost approximately \$1500.00. The landlord also stated that she had to have the property cleaned after the tenants vacated and that the tenants did not respond to requests for a move-out condition inspection.

The landlord also stated that the carpets had to be cleaned after the tenancy ended, for \$660.00, and was required to hire a locksmith to change the lock.

The landlord stated that she has also had to pay for materials and items such as light bulbs.

The landlord stated that she has spent substantially more than the amount of the security and pet damage deposits to clean and repair the rental unit after the tenancy ended.

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

The landlord failed to submit documentary evidence in support of her claim.

Analysis

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

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, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, 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-

In the case before me, the tenant communicated their forwarding address in an email transmission. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the tenant's evidence.

Although the Act does not recognize email transmission as an acceptable method of delivery of documents, I order that the delivery of the tenant's forwarding address through the March 26, 2012 email to the landlord, with the landlord's response, sufficiently served, pursuant to section 71 of the Act.

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 and pet damage deposit, to the tenant or make application for dispute resolution claiming against the deposits. In this case, I find the tenancy ended and the landlord received the tenant's forwarding address on March 26, 2012. Therefore the landlord was required to return the tenant's security deposit and pet damage deposit or file for dispute resolution no later than April 15, 2012. I find the landlord did neither.

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

As to the tenant's claim for compensation in showing the basement suite for the landlord, I find the tenant submitted insufficient evidence that she suffered a loss as a result of the landlord actions and further, if the parties had an 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 \$358.40.

As to the tenant's claim for a lock, I find that the tenant submitted insufficient evidence to hold the landlord responsible for a discretionary lock replacement on a door within the rental unit. I therefore dismiss the tenant's claim for \$100.00

As to the balance remaining of the utilities shared by the tenant in the lower suite, I find the tenant submitted insufficient evidence of a bill proving the amount of that bill. I therefore dismiss the tenant's claim for \$5.81.

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

I find the tenant has established a monetary claim in the amount of \$3350.00, comprised of her security deposit of \$1450.00, doubled, her pet damage deposit of \$200.00, doubled, and \$50.00 for recovery the filing fee.

Landlord's application-

I find the landlord failed to comply with the Act by her failure to provide the opportunity for either a move-in condition inspection or a move-out condition 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 or damaged. A condition inspection could easily reveal such condition of the rental unit.

Even had the landlord provided a condition inspection report, I would still make the decision to dismiss the landlord's claim for her failure to provide any evidence verifying that she has suffered a loss.

I therefore **dismiss** the landlord's claim for \$1084.89 for damages and cleaning.

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

Conclusion

I grant the tenant a monetary order for her monetary claim in the amount of \$3350.00 pursuant to section 67 of the Act.

I am enclosing the monetary order for \$3350.00 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.

I dismiss the landlord's application, without leave to reapply.

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 31, 2012.

Residential Tenancy Branch