



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: MNSD; FF

Landlords' application: MNSD; MNDC; MND

Introduction

The Tenant's application was set for Hearing on April 5, 2012. During the Hearing on April 5, 2012, the Landlords made application to adjourn to allow them an opportunity to respond to the Tenants' documentary evidence. The Landlords' application to adjourn was granted and the Tenant's application was adjourned to April 25, 2012. On April 11, 2012, the Landlords filed their own Application, which was scheduled to be heard at the same time as the Tenants reconvened Hearing.

The Tenants seek a monetary award equivalent to double the amount of the security deposit; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a monetary award for damage to the rental property; compensation for damage or loss under the Act, regulation or tenancy agreement; and to apply the security deposit in partial satisfaction of their monetary award.

The parties gave affirmed testimony at both of the Hearings.

Issues to be Decided

1. Are the Tenants entitled to double the amount of the security deposit, pursuant to the provisions of Section 38 of the Act?
2. Are the Landlords entitled to a Monetary Order pursuant to the provisions of Sections 7 and 67 of the Act?

Background and Evidence

The parties agreed to the following facts:

- The Tenants paid a security deposit to the Landlords in the amount of \$900.00 on June 30, 2009.
- The tenancy ended on February 29, 2012.

- The Tenants gave the Landlords their forwarding address in writing on February 29, 2012.
- The parties met to perform a move-out Condition Inspection Report on February 29, 2012, but the Tenants did not agree with the Landlords' assessment of the condition of the rental unit and declined to sign the Report.
- There was no move-in Condition Inspection Report completed at the beginning of the tenancy.

The Landlords provided the following testimony:

The Landlords testified that the rental unit was only one year old when the Tenants moved in and in excellent condition throughout. They testified that the Tenants and their pets damaged the carpets in the rental unit and that they were badly stained even after professional steam cleaning. The Landlords stated that there were urine stains on the backing of the carpets from the Tenants' pets. The Landlords testified that they have replaced the carpet in the mezzanine and will have to replace the carpets in a bedroom and stairway of the rental unit. The Landlords seek a monetary award for the cost of replacing the carpets.

The Landlords testified that the Tenants told them that the garburator was not working about one and ½ years ago. The Landlords stated that they had a repairman scheduled to fix the garburator, which was still under warranty, but that the Tenants said not to bother because their son had fixed it. The Landlords testified that the garburator was not functioning at the end of the tenancy and therefore they seek to recover the cost of replacing the garburator.

The Landlords testified that the rental unit is up for sale, but that it has not sold yet.

The Tenants provided the following testimony:

The Tenants testified that the female Landlord came to do a "walk through" at the beginning of the tenancy, but only spent about 10 minutes and only looked at some areas of the rental unit. The Tenants testified that some of their possessions and furniture were already in the rental unit at the time of the walk through. They testified that no written Condition Inspection Report was prepared during the "walk through". The Tenants stated that the Landlord made remarks about how dirty the previous tenant was.

The Tenants testified that the Landlords lived in the rental unit prior to the Tenants moving in and that they had a dog. The Tenants testified that just before the Tenant moved in, and after the Landlords lived in the rental unit, a woman and her dog had also

lived there for 6 months. The Tenants stated that the carpets were stained when they moved in and disputed that they were responsible for the pet stains or other stains on the carpets. The Tenants testified that they thoroughly cleaned the rental unit at the end of the tenancy and that they shampooed the carpets.

The Tenants testified that when the garburator stopped working properly 1 ½ years ago, the Landlord told them to put Drano down the garburator, which they did. The Tenants testified that the garburator did not work afterwards and that the Landlord made no offer to replace it. The Tenants denied abusing the garburator and stated that they just didn't use it after it stopped working.

Analysis

Regarding the Tenants' Application for Dispute Resolution:

A security deposit is held in a form of trust for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's written 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.

The parties agreed that the tenancy ended and the Landlord received the Tenants' forwarding address in writing on the same day, February 29, 2012. The Tenants did not agree that the Landlords could keep any of the security deposit. The Landlords did not return the security deposit within 15 days of February 29, 2012, nor did the Landlords file for dispute resolution against the security deposit within that 15 day period.

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 security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the security deposit, in the amount of \$1,800.00. No interest has accrued on the security deposit.

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Landlords.

Regarding the Landlords' Application for Dispute Resolution:

This is the Landlords' claim for damage or loss under the Act and therefore 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 Tenant 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.

Section 23 of the Act requires a landlord to offer a tenant at least 2 opportunities, as prescribed, for a move-in condition inspection. Section 14 of the Regulation provides that the rental unit must be empty of the Tenant's possessions at the time of the inspection. Section 23 also requires the landlord to complete the report in accordance with the regulations and if the tenant does not participate, then the landlord must make the inspection and complete and sign the report without the tenant. In other words, it is the landlord's responsibility to ensure that the move-in condition inspection report is completed. In this case, I find that the Landlord did not comply with Section 23 of the Act.

The parties disagreed with respect to the condition of the carpets at the beginning of the tenancy and in the absence of a move-in Condition Inspection Report or other documentary evidence to support the Landlord's claim that the carpets were pristine, I find that the Landlords have failed to provide sufficient evidence to support their claim because they failed to prove, on the balance of probabilities, that the Tenants' actions or neglect caused damage or loss to the Landlords.

Similarly, there was insufficient evidence to support the Landlords' claim for damage to the garburator. The Landlords testified that they knew the garburator was not working properly and had arranged for a repairman to fix it under warranty, but that the Tenants told them their son would fix it. I find that the Landlords failed to take steps to mitigate or minimize the loss or damage being claimed by not having a professional fix the garburator. There was also no evidence that the actions or neglect of the Tenants lead to the garburator breaking.

The Landlords' application is dismissed in its entirety.

Conclusion

The Landlords' application is **dismissed without leave to reapply**.

I hereby provide the Tenants a Monetary Order in the amount of **\$1,850.00** for service upon the Landlords. This Order 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: May 02, 2012.

Residential Tenancy Branch