



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed March 14, 2012: MND; MNR; MNSD; MNDC; FF

Tenants' application filed April 24, 2012: MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement; return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a Monetary Order for unpaid rent and damages to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit; and to recover the cost of the filing fee from the Tenants.

The parties and the Tenants' witness gave affirmed testimony at the Hearing.

Preliminary Matters

At the outset of the Hearing, the Landlord sought to have the Tenants' Application dismissed because she did not receive the Tenants' Notice of Hearing documents until May 9, 2012. The Landlord relied on Section 59(3) of the Act which requires applicants to serve respondents with a copy of their application within three days of making it.

The Tenants stated that they were first-time users of the Dispute Resolution process and were unaware of the provisions of Section 59(3) of the Act.

I declined to dismiss the Tenants' application. The Tenants' unfamiliarity with the provisions of the Section 59(3) of the Act does not excuse providing late service of their Application, however there is no provision in the Act for dismissing an Application if the applicant does not comply with Section 59(3) of the Act.

The Tenants provided evidence that they had written to the Landlord on March 11, 2012 advising of their intention to make their Application (the details of which were included in the letter and which are the same claims as are described in the Tenants' Application for Dispute Resolution) and indicating that if the Landlord did not comply with their written demand within 10 business days they would be filing an Application. Therefore,

the Landlord was aware of the Tenants' potential claim. The Landlord did not wish to adjourn the matter in order to be provided more time and the Hearing continued.

Issues to be Decided

1. Are the Tenants entitled to compensation in the equivalent of double the security deposit?
2. Are the Tenants entitled to compensation in the equivalent of ½ a month's rent for complete loss of use of their bathroom?
3. Is the Landlord entitled to a monetary award against the Tenants for loss of revenue?
4. Is the Landlord entitled to a monetary award against the Tenants for damage to the rental unit?
5. Is the Landlord entitled to apply the security deposit in partial satisfaction of her monetary award?

Background and Evidence

Undisputed facts:

This tenancy began on June 1, 2011. Monthly rent was \$1,600.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 on May 25, 2011.

On January 13, 2012, the Tenants were advised by a representative of the building strata council that an inspection in a neighbouring suite indicated that water from the Tenant's shower was leaking into the wall behind the neighbouring suite, causing extensive water and mould damage. The leak had had been occurring for a long time. The Tenants were asked to stop using their shower.

On January 17, 2012, the Tenants are advised not to use the bathroom at all.

On January 23, 2012, the Tenants' bathtub fell through the sub floor. Access to the bathroom was blocked by a piece of wood nailed across the door.

The Tenants provided the following testimony:

The Tenants submitted that the leak in the bathroom resulted from the Landlord's lack of maintenance. They seek to be reimbursed for ½ of January's rent because the rental unit was uninhabitable after the bathroom was no longer useable.

The Tenants stated that the Landlord suggested that the Tenants shower in another apartment in the same building which was unacceptable to the Tenants.

The Tenants testified that they moved out of the rental unit on January 31, 2012, because they could not live there without a bathroom. They arranged to do a Condition Inspection with the Landlord on February 1, 2012. The Landlord and an unidentified man, the Tenant CP and the Tenants' witness were present at the inspection. The Tenant CP testified that he became upset by the Landlord's demeanor and aggressive behavior during the inspection and left the apartment before the inspection was concluded. The Tenants' witness stayed and finished the inspection with the Landlord and the unidentified man. The Tenants' witness and the Landlord agreed upon what further work had to be done before the Tenants would receive their security deposit back. The Tenant testified that this work included: cleaning carpets, painting a door stoop, and replacing a broken window.

The Tenants' witness is the Tenant CP's mother. She testified that she hired a professional cleaner to clean the suite after it was empty on January 31, 2012. She stated that the same professional cleaner cleaned the suite previously on a biweekly basis. The witness testified that it took them 4 hours to finish cleaning the suite.

The Tenants' witness testified that she provided the Landlord her address as a forwarding address for the Tenants by writing the address on the back of the Condition Inspection Report on February 1, 2012. She stated that she gave her address to the Landlord because she was not certain what the Tenants' new residential address was going to be.

The Tenant CP testified that the parties agreed to meet for a follow-up inspection on February 3, 2012, but the Landlord did not attend. He stated that the Tenants paid for the window to be fixed and painted the stoop. He testified that on February 8, 2012, there was another inspection. The Tenants agreed that they owe the Landlord \$100.00 for carpet cleaning, \$60.00 for additional cleaning and \$70.00 for other minor repairs.

The Landlord provided the following testimony:

The Landlord stated that she had renovated the bathroom in 2009 and that the Tenants were responsible for damaging the bathtub, which caused the leak. She stated that the Tenants did not tell the Landlord about the leak until it caused a lot of damage. She stated that the Tenants were careless and also broke a cupboard door, blinds, the fire alarm, window and other items in the rental unit. She testified that she was surprised when the Tenants told her about the leaky shower and told them that she would reduce their rent and that they could use the shower of another occupant in the rental property,

who was her friend. The Landlord stated that the Tenant CP refused her offer because he is a “very stinky man” and uses a shower twice a day.

The Landlord submitted that the real reason the Tenants moved out was because they wanted to move into a three bedroom suite with another friend.

The Landlord testified that the Tenant CP was very angry at the move-out inspection on February 1, 2012. She stated that he swore at her and tried to hit her so the inspection was not finished. The Landlord seeks to keep the security deposit because the Tenant CP did not finish the inspection and refused to sign the Condition Inspection Report.

The Landlord denied receiving the Tenants’ forwarding address on February 1, 2012. She stated that the address that was written on the back of the Condition Inspection Report was in another province and did not belong to the Tenants. She stated that she received the Tenants’ forwarding address on March 4, 2012, by e-mail.

The Landlord testified that the repairs were completed on March 14, 2012, and that she re-rented the rental unit on April 28, 2012.

The Landlord's Application discloses that the Landlord seeks a monetary award, calculated as follows:

rent	\$1,600.00
deposit	\$800.00
fire detector	\$119.00
tiles	\$224.00
carpet	\$600.00
bathroom repair	\$3,000.00
window handle	\$33.60
move in	\$200.00
cleaning	<u>\$80.00</u>
TOTAL	\$5,000.00

Documentary evidence provided by the Landlord on May 3, 2012, indicates that she seeks:

- Liquidated damage and rent loss from February to April, 2012, \$4,800.00
- Keep deposit for repair expenses and cleaning, \$800.00
- Share the cost of bathroom repair, \$16,284.23
- Cover filing fee, \$50.00

The Landlord asked that the calculation in the documentary evidence noted above be considered as an amendment to her Application filed March 14, 2012.

Analysis

Regarding the security deposit

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.

Based on the testimony of both parties, I find that the Landlord received the Tenants' forwarding address in writing on February 1, 2012. A forwarding address does not have to be the new residential address of a tenant. The Landlord did not return the security deposit within 15 days of receipt of the Tenants' forwarding address, nor did the Landlord file for dispute resolution against the security deposit within 15 days.

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.

The Tenants agreed that the Landlord could retain a total of \$230.00 from the security deposit for damages and extra cleaning, and therefore I find that the Tenants are entitled to a monetary award with respect to the security deposit, calculated as follows:

Double the amount of the security deposit	\$1,600.00
Less amount the Tenant agreed the Landlord could retain	<u>-\$230.00</u>
Total	\$1,370.00

Regarding the remainder of the parties' applications:

In a claim for damage or loss under the Act, regulation or tenancy agreement, the onus is on the party making the claim to provide sufficient evidence to establish their claim on the civil standard, the balance of probabilities.

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

Based on the testimony of both parties and the documentary evidence provided there is insufficient evidence that the leak occurred as a result of negligence on behalf of the Landlord, or damage caused by the Tenants. I find it probable that a seal in the bathtub failed and that the faulty seal was not apparent to the Tenants. I find it probable that the Tenants were unaware of the leak or the damage that it was causing until they were advised by the strata council member.

I find that the rental unit was uninhabitable for half of the month of January, 2012. I do not accept that it was reasonable to expect the Tenants to use another bathroom in the rental property for showers, or other bathroom activities. The Landlord did not provide alternate living accommodations for the Tenants while the rental unit was under repairs. I find that the Tenants ended the tenancy as a result of the Landlord's breach and I find that the Tenants are entitled to the compensation sought in the amount of **\$800.00**.

The Landlord's application for compensation for damage or loss is dismissed in its entirety. The Landlord did not provide sufficient evidence that the damage or loss occurred due to the actions or neglect of the Tenants.

The Landlord has not been successful in her application and I find that she is not entitled to recover the cost of the filing fee from the Tenants.

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

I hereby provide the Tenants a Monetary Order, calculated as follows:

Compensation pursuant to Section 38 of the Act	\$1,370.00
Compensation pursuant to Section 67 of the Act	\$800.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$2,220.00

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

I hereby provide the Tenants a Monetary Order in the amount of **\$2,220.00** 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 31, 2012.

Residential Tenancy Branch