



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted 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.

I note that the two tenants are referred to in the third person masculine singular due to the male tenant providing the majority of the testimony.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on March 1, 2008, ended on April 30, 2012, monthly rent was \$1650.00 and the tenant paid a security deposit of \$800.00 at the beginning of the tenancy and a pet damage deposit of \$150.00 during the tenancy.

The landlord's monetary claim:

Six loads to transfer station	\$600.00
-------------------------------	----------

Carpet cleaning	\$240.00
Window cleaning	\$120.00
General cleaning	\$600.00
Ensuite floor	\$580.00
Flooring removal and disinfect laundry room	\$400.00
Furnace and duct cleaning	\$200.00
Yard clean; removal of temporary fencing	\$150.00
Total	\$2950.00

The landlord's relevant evidence included the tenancy agreement, faint copies of photographs of the rental unit, a condition inspection report which was not in the proper form as required by the Act, statements from workers working on the rental unit after the tenancy agreement, a letter from the tenants after the tenancy ended and a letter to the tenants from the landlord.

In support of their application, the landlord said that the tenants left so many items of personal property and garbage in the rental unit after they vacated, that it took 6 truck loads to the land fill to dispose of the items and garbage, for which he had to hire someone to assist.

The landlord stated that the carpets were not cleaned by the tenant, which not only caused the landlord to incur costs for cleaning, but that the condition required extra cleaning for which he had to hire cleaners.

The landlord said that the condition of the house at the end of the tenancy was hard to describe, due to the filth and smell; for instance, the refrigerators were left full of food, dog feces were left throughout the house, including under the refrigerator, and there was serious floor damage due to dog urine, causing the ensuite flooring to be replaced.

The landlord said that he also had to clear the yard of compost and dog feces.

When questioned, the landlord said that the tenant did not attend the move-out inspection and confirmed that he sent a text message asking for the inspection. When questioned further, the landlord confirmed that he received the tenant's forwarding address on May 1, 2012, via text message. The address received was the address used by the landlord for service of the Hearing Package, or the application and Notice of Hearing.

When questioned, the landlord said that he had not returned any portion of the tenant's security deposit or pet damage deposit, having filed an application claiming against it. I note that the application was filed May 24, 2012.

In response, the tenant said that the landlord came to the rental unit on April 29, and the parties did a walk-through of the rental unit. The tenant said that there was a discussion

about the items which were to be left, which the tenant claimed contained a number of useful items, not garbage. The tenant said that they ran out of time to remove all the items.

The tenant disputed that it would take 6 trips to remove all the items or that it would cost the amount claimed by the landlord as the transfer station was only 5.6 kilometres from the rental unit.

The tenant said that he and his father-in-law cleaned the rental unit and cleaned the carpet and that the furnace and duct were cleaned a year earlier.

The tenant questioned the written statement from one of the landlord's witnesses, saying he didn't know who he was or if he was a contractor, although he had made inquiries.

The tenant said that the temporary fencing was put up for the pets and that it was left up as the new tenants had dogs.

The tenant said that the landlord asked if they could have an inspection on May 1, but said that he could not as he had already vacated the rental unit and was driving to his new residence out of province.

In response, the landlord confirmed that the house needed some work at the start of the tenancy.

Analysis

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

In applications for monetary claims, awards for compensation for damage or loss are provided under sections 7 and 67 of the Residential Tenancy Act (the "Act"). A successful applicant cannot simply allege a violation of the Act, regulations or tenancy agreement by the other party, but rather, the applicant, the landlord in this case, must establish all of the following:

1. That there was damage or loss by the claiming party;
2. That the alleged damage or loss was due to the respondent's breach of the tenancy agreement or the Act or from negligence;
3. Verification or proof of the loss; and,
4. That the claimant took all reasonable steps to minimize the damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Section 35(2) of the Act requires that the landlord offer the tenant 2 opportunities, as prescribed, for the inspection of the rental unit at the end of the tenancy. This requirement is not discretionary. An opportunity to inspect also must be in the approved form.

Section 36(2) of the Act states that the right of a landlord to claim against the security deposit for damages is extinguished if the landlord has not complied with section 35(2).

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on May 1, 2012, but did not return the security deposit and pet damage deposit or file an application for dispute resolution within 15 days of that date; therefore the Act requires that the landlord pay the tenant double the amount of the deposits.

However, Residential Tenancy Branch Policy Guidelines state that even if the landlord lost his right to claim against the security deposit for damages, the landlord may still make a monetary claim for damages.

In this case, the landlord submitted insufficient evidence that he incurred a loss as I saw no receipts, invoices, cancelled cheques, credit or debit card charges, etc.

This is step 3 of his burden of proof, which the landlord failed to meet.

Although the landlord failed to provide proof of a loss, in reviewing the evidence the tenants did admit to leaving personal property in the rental unit at the end of the tenancy. I therefore find the landlord is entitled to nominal damages, which are a minimal award. These damages may be awarded where the burden of proof of a significant loss has not been met, but they are an affirmation that there has been an infraction of a legal right.

I therefore find it reasonable under the circumstances to award the landlord nominal damages in the amount of \$500.00.

As I have found partial merit to the landlord's application, I find he is entitled to recovery of the filing fee.

Conclusion

I find the landlord has established a monetary claim in the amount of \$550.00, comprised of nominal damages of \$500.00 and the filing fee of \$50.00.

I find the tenants are entitled to a monetary award in the amount of \$1910.03, comprised of their security deposit of \$800.00, doubled to \$1600.00, interest of \$10.03 on the security deposit and their pet damage deposit of \$150.00, doubled to \$300.00. I have not included interest on the pet damage deposit as the evidence showed that the

tenants paid instalments of \$50.00 each, with no proof of when the instalments were made.

I direct that the landlord retain the amount of \$550.00 from the tenant's monetary award in satisfaction of his monetary claim. I also grant the tenant a final, legally binding monetary order in the amount of \$1360.03, which is the balance remaining after the landlord has deducted \$550.00.

I have enclosed the monetary order with the tenant's Decision. Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement.

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: July 30, 2012.

Residential Tenancy Branch