



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

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

Landlord's application filed May 2, 2012: MND; MNR; MNSD; FF

Introduction

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

The Landlord seeks a Monetary Order for unpaid rent and utilities; to retain the security deposit; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing. The parties were each given full opportunity to be heard, to present evidence and to make submissions.

It was determined that the Tenants served the Landlord with their Notice of Hearing documents by registered mail and that the Landlord served the Tenants with his Notice of Hearing documents by personal service. Each party provided the other with copies of their documentary evidence.

A large amount of documentary evidence and oral testimony was provided at the Hearings. I have considered all testimony and documentary evidence that met the requirements of the Rules of Procedure. However, I have referred only to evidence that was relevant to the parties' Applications in this Decision.

Preliminary Matters

The Landlord did not indicate on his Application for Dispute Resolution filed May 2, 2012, that he was seeking a monetary order for the cost of cleaning the rental unit at the end of the tenancy (MND). However, he did refer to this cost in his documentary evidence and in his monetary claim calculation on his Application for Dispute Resolution. The Tenants were aware of this portion of his monetary claim and provided a considerable amount of documentary evidence to refute it. Both parties understood that the Landlord was intending to submit a claim for the cost of cleaning and therefore, I amended the Landlord's Application to include this claim.

The Tenants' Application named the Landlord's legal counsel as "Landlord" and provided a different last name for the female Tenant. The Tenants' application was amended to delete the Landlord's legal counsel, add the owner as the "Landlord", amend the female Tenant's last name, and to add the male Tenant as a "Tenant".

Issues to be Decided

1. Are the Tenants entitled to compensation equivalent to double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?
2. Are the Tenants entitled to a monetary award pursuant to the provisions of Section 67 of the Act?
3. Is the Landlord entitled to a monetary award for unpaid rent and utilities and the cost of cleaning the rental unit at the end of the tenancy, pursuant to the provisions of Section 67 of the Act?
4. May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The tenancy agreement was a term lease, beginning December 1, 2011, and ending April 30, 2012. The Tenants moved out of the rental unit on April 16, 2012.

Monthly rent was \$4,300.00, due on the first day of each month. Rent included utilities up to a maximum of \$100.00 per month for each of the hydro and gas charges. Any additional amounts were to be paid by the Tenants. No rent was paid for April, 2012.

The Tenants paid a security deposit of \$4,300.00, which was in excess of the equivalent of ½ a month's rent, contrary to the provisions of Section 19(1) of the Act. Pursuant to the provisions of Section 19(2) of the Act, the Tenants deducted the overpayment of \$2,150.00 from February's rent. The Landlord is holding the remaining amount of the security deposit, \$2,150.00.

The Tenants provided the following testimony and submissions:

- The rental unit was not clean at the beginning of the tenancy. The Landlord did not provide a copy of the bill for cleaning that was allegedly done in December, 2011.
- The hot tub did not function properly after January, 2012. The Tenants seek compensation in the amount **\$500.00** for loss of use of the hot tub and the cost of additional electricity required to heat the hot tub.

- For 2 ½ to 3 months, the bathrooms were not working properly because the toilet kept backing up and overflowing. The Tenants seek compensation in the amount of **\$800.00**.
- The kitchen sink backed up and was not fixed for two weeks after the Tenants advised the property manager. The microwave did not function properly and the stove did not work for one month. The Tenants had to eat out over the Christmas holiday period. The Tenants seek compensation in the amount of **\$500.00** for this portion of their claim.
- The Tenants sent the Landlord their forwarding address in writing, by registered mail sent April 29, 2012. The Landlord gave up his right to claim against the security deposit because there was no move-in-condition inspection done at the beginning or the end of the tenancy.
- The Tenants left the rental unit clean when they moved out. It was cleaner than when they moved in.
- The parties had an agreement that the tenancy would end on April 16th and that the Landlord would keep the security deposit in satisfaction of rent for April, 2012.

The Landlord provided the following testimony and submissions:

- The rental unit was professionally cleaned at the end of the previous tenancy and sat vacant for two months until the Tenants moved in.
- On December 14, 2011, the professional cleaners attended the rental unit again.
- The hot tub was serviced December 1st, 12th and 19th, but the Landlord was not satisfied with the company they hired, so he hired another company who serviced the hot tub on December 23, 2012. The Landlord received no further complaints from the Tenants about the hot tub after December 23, 2011, and the hot tub was serviced on a weekly schedule.
- The Landlord could not find anything wrong with the toilets. The Tenants were asked to use less toilet paper and to hold the flushing handle down for a longer period of time.
- The Landlord was advised on February 26, 2012, that the kitchen sink was blocked and that it had been blocked for two weeks. The kitchen sink was fixed the next day, Monday. The Tenants were not inconvenienced because they were away the weekend of the 26th.
- The Landlord was advised that the microwave was not functioning on a Sunday and the microwave was replaced the following Wednesday. Afterwards, it was discovered that the microwave was not broken, but that the Tenants had put it on the wrong setting.
- The Landlord received a panicked call from the Tenant's babysitter on December 23 because the stove was making a "weird noise". The property manager was

there within 15 minutes. Water was found inside one of the elements. The stove required a part, but the company was closed over the holidays until the first Monday in January, 2012. The stove was fixed on January 5, 2012. A thermo-coupler in the fire place was replaced the same day.

- The stove was functioning, but the Tenants had to use a BBQ lighter to light the gas flame.
- The Landlord heard no complaints from the Tenants between January 5 and February 20, 2012, when their rent cheque bounced.
- The parties contemplated an agreement with respect to ending the tenancy on April 16, 2012, but the terms were never agreed upon and therefore no such agreement existed. The Landlord seeks unpaid rent for the month of April in the amount of **\$4,300.00**.
- The Tenants did not clean the rental unit well enough at the end of the tenancy, nor did they have the carpets professionally cleaned. The property manager spent 6.5 hours over two days getting the rental unit ready for new tenants after the Tenants moved out. The Landlord also paid professional cleaners **\$235.20** to clean the premises, and **\$452.46** for cleaning the carpets and a couch.
- The Tenants owe the Landlord for unpaid hydro and gas. The amounts owed, **after deducting the \$100.00 per month per service**, are: **\$540.67** for hydro; and **\$709.62** for gas.

Analysis

Regarding the Tenants' Application

Are the Tenants entitled to compensation equivalent to double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?

A security deposit is held in a form of trust by the Landlord 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 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**, whichever shall last occur, 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.

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 submitted that the Landlord's right to claim against the security deposit was extinguished under the provisions of Section 38(5) of the Act (failure to complete a move-in condition inspection report). Section 38(5) of the Act precludes a landlord from claiming against **damage** if he fails to complete a condition inspection report, but a landlord still retains the right to apply against the security deposit for unpaid rent.

In this case, it was established that the Tenants sent their forwarding address in writing, by mail, on April 29, 2012. The Landlord made application against the security deposit on May 2, 2012, which is within the 15 days allowed under Section 38(1) of the Act.

In addition to the above, the Tenants submitted that they had agreed that the Landlord could retain the security deposit in lieu of rent. The Landlord disputed that any such agreement was made, but the Tenants relied on this agreement in response to the Landlord's application for unpaid rent.

This portion of the Tenants' application is **dismissed**.

Are the Tenants entitled to a monetary award pursuant to the provisions of Section 67 of the Act?

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

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

I find that the Tenants have not provided sufficient evidence to prove their claim. The Landlord submitted that any complaints received from the Tenants were dealt with reasonably quickly. I find that the Tenants provided insufficient evidence that they advised the Landlord of problems with the hot tub, bathrooms, kitchen sink or microwave in a timely fashion or that the Landlord took an unreasonable amount of time to address those problems once he was notified. With respect to the stove element, the Landlord agreed that he was notified on December 23rd. I accept the Landlord's submission that only one of the burners was affected and that the other burners and the stove remained fully functional. I do not accept the Tenants' position that it was dangerous to start the stove with a barbeque lighter.

This portion of the Tenants' application is also **dismissed**.

The Tenants have not been successful in their claim and I find that they are not entitled to recover the cost of the filing fee from the Landlord.

Regarding the Landlord's Application

Is the Landlord entitled to a monetary award for unpaid rent and utilities and the cost of cleaning the rental unit at the end of the tenancy, pursuant to the provisions of Section 67 of the Act?

I have carefully considered the parties' testimony and documentary evidence with respect to any agreement that may have been reached regarding early termination of the tenancy. I find that no such agreement existed. It is clear that there were **negotiations** surrounding an early end of tenancy, but the Landlord made it clear that there were conditions to be met before he would agree to early termination, which were laid out in e-mails to the Tenants dated April 12 and 13, 2012. These conditions included an agreement that the Tenants pay \$2,150.00 to the Landlord's lawyer, in trust, the disposition of which would be determined after a move-out condition inspection. In an e-mail dated April 13, 2012, the Tenants declined to meet the Landlord's conditions. Therefore, I find that there was no agreement to end the tenancy early and that the Landlord is entitled to unpaid rent for the month of April, 2012 in the amount of **\$4,300.00**.

The Landlord provided copies of utility bills in evidence. The Tenants did not dispute that they owed outstanding utilities. Therefore, based on the terms of the lease and the Landlord's documentary evidence, I find that the Landlord has provided sufficient evidence to prove this portion of his claim in the amount of **\$1,250.25** (\$540.67 for hydro and \$709.62 for gas).

With respect to the Landlord's application for the cost of professionally cleaning the carpets, the Landlord testified that the carpets had to be professionally cleaned twice to get rid of some red juice or wine stains. There is a clause in the tenancy agreement that provides for professional cleaning at the end of the tenancy, however the Landlord did not provide sufficient evidence that the stains were not there at the beginning of the tenancy (by performing a move-in condition inspection report). The Tenants testified that they cleaned the carpets at the end of the tenancy, but did not provide evidence that they were **professionally** cleaned.

The Landlord provided a copy of an invoice from a professional cleaning company that includes carpet cleaning and sofa cleaning. The portion of the bill (before calculating HST) for carpet cleaning is \$304.00. I allow this portion of the Landlord's claim in the amount of **\$170.24**, half of the amount invoiced for carpet cleaning (\$152.00) plus applicable HST (\$18.24).

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged, except for reasonable wear and tear, at the end of a tenancy. There is no higher standard required in luxury accommodations. I find that the Landlord did not provide sufficient evidence that the Tenant did not leave the rental unit reasonably clean. The Tenant provided photographs of the rental unit taken at the end of the tenancy which indicate that the rental unit was clean. Therefore, I **dismiss** the Landlord's application for the cost of extra cleaning services.

The Landlord has been partially successful in his claim and I find that he is entitled to recover the cost of the **\$100.00** filing fee from the Tenants.

I find that the Landlord has established a total monetary award, calculated as follows:

Unpaid rent for April, 2012	\$4,300.00
Unpaid utilities	\$1,250.25
Partial recovery of cost of shampooing carpet	\$170.24
Recovery of filing fee	<u>\$100.00</u>
TOTAL AWARD	\$5,720.49

May the Landlord apply the security deposit towards partial satisfaction of his monetary award?

Section 72(2) of the Act allows partial payment of a landlord's monetary award to be deducted from any security deposit due to the tenant. Therefore, pursuant to the provisions of Section 72(2) of the Act, I hereby set off the security deposit against the

Landlord's monetary award and provide the Landlord a Monetary Order against the Tenants for the balance:

Landlord's monetary award	\$5,720.49
Less security deposit held	<u>-\$2,150.00</u>
Balance after set-off of security deposit	\$3,570.49

Conclusion

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

I hereby provide the Landlords a Monetary Order in the amount of **\$3,570.49** for service upon the Tenants. 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: July 23, 2012.

Residential Tenancy Branch