



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MNSD, MND, MNDC and FF
Tenant: MNSD

Introduction

This hearing was convened on applications by both the landlords and the tenant.

By application of August 17, 2012, the landlords sought a monetary award for the cost of cleaning the rental unit, an overdue NSF fee, an electrical repair charge made in the landlord's name without consent, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of June 28, 2012, the tenant sought return of her security deposit on the grounds that the landlord retained it without consent or application to claim against as required under the legislation.

Issue(s) to be Decided

The landlord's application requires a decision on whether they are entitled to a monetary award as claimed and authorization to retain the security deposit in set off.

The tenant's application requires a decision on whether she is entitled to return of the security deposit and whether the amount should be doubled.

Background, Evidence and Analysis

This tenancy began on June 6, 2010 and ended on June 30, 2012, although the tenant gave up vacant possession in mid-June 2012. Rent was \$1,350 per month and the landlords held a security deposit of \$675 paid at the beginning of the tenancy.

Tenant's Claim

During the hearing, the parties concurred that the tenant had provided the landlords with her forwarding address in June 2012. The parties also agreed that the landlords had returned \$257.65 of the deposit, but had retained \$417.35 of against charges set out in the landlords claims to follow.

The landlords held that the tenant's right to the security deposit had been extinguished as the tenant had not set an appointment to complete a move-out condition inspection report. However, section 23 of the *Act* puts the onus on the landlord to schedule the condition inspection, and offer a second opportunity if the tenant cannot attend the first. Therefore, I find that both parties breached the inspection requirement and it cannot be a determining factor.

Section 38(1) of the *Act* allows a landlord 15 days from the latter of the end of the tenancy or receipt of the tenant's forwarding address to return security and pet damage deposits or file for dispute resolution to make claim against them unless the tenant has agreed otherwise in writing as per section 38(4).

Section 38(6) of the *Act* states 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 deposits.

In the present matter, I find that the landlords returned only a portion of the deposit, and must return the balance retained without consent or hearing in double.

Landlords' Claims

The landlords still retain the right to claim for damage or loss, and in their application have submitted three claims on which I find as follows:

NSF fee - \$25. The landlords gave evidence that the tenant's rent cheque for February 2012 had been returned NSF and while she had replaced the rent cheque, she did not include the NSF fee as requested and as she agreed to do in an email dated February 8, 2012 submitted into evidence. The tenant stated that the NSF cheque had resulted from a bank error, but in the absence of documentary proof, I find that the claim is allowed.

General Cleaning - \$338.95. The landlords submitted a paid invoice to Molly Maids and a number of photographs of areas of the rental unit in need of cleaning in support of

this claim. The tenant stated the billing was excessive as she had her father had spent two days cleaning the unit before she left.

On the basis of the photographic evidence and the landlords' description of items needing further cleaning, I allow this claim in full.

Electrical Bill - \$78.40. The landlords submitted a copy of an electrician's bill dated January 13, 2012 which they stated they had found in a drawer at the end of the tenancy and which they subsequently paid. The tenant said that the dishwasher had stopped working and that she had contracted for the repair and had not paid for it. The landlord's noted that they had electrician's in the family and could have had the work done for no charge if the tenant had advised them of the problem with the dishwasher.

Even for emergency repairs under section 33 of the *Act*, a tenant must make two attempts to contact the landlord before engaging a third party contractor. Therefore, I find this claim is allowed in full.

As both parties have breached the *Act*, I find that each should remain responsible for their own filing fees.

Thus, I find that accounts balance as follows:

Award to tenant		
To double unreturned portion of security deposit	<u>417.35</u>	
Sub total	\$834.70	\$834.70
Award to landlords		
NSF fee	\$ 25.00	
General cleaning	338.95	
Electrical bill	<u>78.40</u>	
Sub total	\$442.35	- <u>442.35</u>
Balance owed to tenant by landlords		\$392.35

Conclusion

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for **\$392.35** for service on the landlords.

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: September 07, 2012.

Residential Tenancy Branch