



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damages and loss of revenue; to retain a portion of the security deposit in satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The Landlord's agent testified that he mailed the Notice of Hearing documents to the female Tenant, by registered mail, to the forwarding address that she provided. The female Tenant attended the Hearing but the male Tenant did not. Co-Tenants are jointly and severally responsible for debts and damages incurred during a tenancy. The Landlord did not provide sufficient evidence that the male Tenant was served with the Notice of Hearing documents and therefore the Hearing proceeded against the female Tenant only. The Landlords' Application against the male Tenant is dismissed without leave to reapply.

It was determined that the parties exchanged their documentary evidence by registered mail.

The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, 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.

Issues to be Decided

- Are the Landlords entitled to compensation for loss of revenue from June 1 to June 5, 2012, for the cost of cleaning the rental unit and shampooing the carpets, and for the cost of repairing plumbing in the kitchen of the rental unit?
- May the Landlords deduct their monetary award from the security deposit?

Background and Evidence

This tenancy began on May 31, 2010. At the end of the tenancy, monthly rent was \$1,938.58, due on the first day of each month. The Tenants paid a security deposit in the amount of \$947.50 on June 1, 2010.

The Tenants moved out of the rental unit on June 1, 2012. A move out Condition Inspection Report was completed on June 5, 2012, a copy of which was provided in evidence. The female Tenant was present at the move out inspection and signed the section of the report indicating that she agreed that the Landlords could retain \$336.00 from the security deposit for cleaning and \$178.00 for steam cleaning the carpets. The balance of \$433.50 was to be returned to the Tenant.

The Landlords filed their Application on June 14, 2012, because they seek additional compensation which they wish to deduct from the security deposit. The Landlords seek loss of revenue from June 1 – June 5, 2012, in the amount of \$323.00. They also seek to recover the cost of repairing the plumbing to the kitchen sink in the amount of \$75.00.

The Tenant testified that they had originally planned to do the move out inspection on June 1, 2012, or June 4, 2012, as suggested by the Landlords, but that the Landlord's agent later requested that it be done on June 5, 2012. She stated that there were no new occupants waiting to move in and that nothing was said about the Tenants being liable for extra rent.

The Tenant testified that she noticed that the pipe under the kitchen sink began to leak on the day that they were cleaning the rental unit. She stated that it was a coincidence and that she would have told the Landlord about it if it had happened earlier. The Tenant stated that it was normal wear and tear and that the Tenants had done nothing to damage the plumbing.

Analysis

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 Tenant 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.

With respect to the Landlord's application for the cost of cleaning and shampooing the carpets, I find that the Tenant has already consented to that cost by signing the Condition Inspection Report acknowledging that deduction from her security deposit.

With respect to the remaining portion of the Landlords' Application for damages and loss of revenue, I find that the Landlords have not provided sufficient evidence for the following reasons:

- The Landlords failed to provide any evidence that they had suffered a loss of revenue for June 1 – 5, 2012 due to the actions or neglect of the Tenant in violation of the Act. I accept the Tenant's testimony that the rental unit was ready for inspection on June 1, 2012. The rental unit had not been re-rented for June 1, 2012, and therefore I find that the Landlords did not suffer a loss.
- The Landlords provided insufficient evidence that the pipe under the sink was damaged by the Tenant's actions or neglect.

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit if, at the end of the tenancy, the tenant agrees in writing to that deduction. In this case, the Tenant agreed in writing that the Landlords could retain the cost of cleaning and shampooing the carpets. Therefore, the Landlords did not have to file an Application for Dispute Resolution in order to deduct that cost from the security deposit.

The Landlords were not successful in their Application for loss of revenue and damage to the plumbing and therefore I find that they are not entitled to recover the cost of the filing fee from the Tenant.

I hereby order the Landlords to return the balance of the security deposit to the Tenant immediately. No interest has accrued on the security deposit.

I hereby provide the Tenant a Monetary Order representing return of the balance of the security deposit, calculated as follows:

Security deposit	\$947.50
Less amount Tenant consented to	<u>-\$514.00</u>
BALANCE DUE TO TENANT	\$433.50

Conclusion

I hereby provide the female Tenant a Monetary Order in the amount of **\$433.50** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 05, 2012.

Residential Tenancy Branch