



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenants' 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.

Neither party raised any issue regarding receipt of the evidence or the application.

All parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence submitted prior to the hearing and make submissions to me.

Only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords entitled to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

The landlord said the tenancy ended on July 30 and the tenant said it ended on July 31, 2012.

At the beginning of the tenancy, the tenants paid a security deposit of \$400.00 to the landlords.

The parties agree that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Branch Regulations.

The landlords have not returned any portion of the tenants' security deposit.

The landlord stated that the tenants vacated the rental unit without telling her and left such a large amount of debris and garbage, she was required to hire a hauling company to remove all of it prior to being able to start cleaning.

The landlords' relevant evidence included photos of the rental unit, a receipt from the hauling company, in the amount of \$413.28 and a letter from the tenant, dated June 22, 2012. I note that this letter informed the landlord that the tenants would be moved from the rental unit by 1:00 p.m. on July 31, 2012, pursuant to an order of possession, and gave the landlord the tenants' written forwarding address.

In response, the tenant said that he left the rental unit clean and tidy and denied that the photos the landlord sent were of the rental unit. The tenant said the landlord was setting them up and getting revenge for having to pay the tenants \$200.00.

The tenant said there were no offers to inspect the rental unit at move-in or move-out.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, upon a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

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

I find the landlord submitted insufficient evidence that the tenants left the rental unit in a state which required cleaning or that they left garbage in the rental unit.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances

before me the landlord has failed to meet her obligation under of the Act of conducting an inspection and completing the inspection reports and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

Also without the condition inspection reports, I find the landlord was unable to prove that the photos depicted the state of the rental unit at the end of the tenancy.

I therefore dismiss their claim to retain the tenants' security deposit of \$400.00, without leave to reapply.

As I have dismissed the landlords' claim, I also dismiss their request for recovery of the filing fee.

I next considered the matter of the tenants' security deposit.

Under the Act, when a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlords in this case did not carry out move-in or move-out inspections or complete condition inspection reports, they lost their right to claim the security deposit for damage to the property.

The landlords were therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address.

In the case before me, the landlords' own evidence shows that she received the tenants' written forwarding address on June 22, 2012, in the letter sent to the landlords and that the tenancy ended on July 31, 2012.

I therefore find the landlord was required to return the tenants' security deposit within 15 days of July 31, 2012, and that she failed to do so.

Because the landlords' right to claim against the security deposit for damage to the property was extinguished, and they failed to return the tenants' security deposit within 15 days of having received the tenants' written forwarding address, section 38 of the Act requires that the landlords pay the tenants double the amount of their security deposit of \$400.00.

Conclusion

The landlords' application is dismissed, without leave to reapply.

I find the tenants are entitled to a monetary order in the amount of \$800.00, comprised of their security deposit of \$400.00, doubled.

I grant the tenants a final, legally binding monetary order in the amount of \$800.00, which I have enclosed with the tenants' Decision.

Should the landlords fail to pay the tenants this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement 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* and is being mailed to both the applicant and the respondent.

Dated: October 19, 2012.

Residential Tenancy Branch