



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for the return of their security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenants be issued a Monetary Order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy that began on May 1, 2012 and was set to end August 31, 2012, after which the tenancy could continue on a month to month tenancy. Rent was payable on the last day of every month in the amount of \$1,250.00. On April 25, 2012 the Tenants paid \$625.00 as the security deposit. No move in or move out condition inspections were conducted and no report forms were completed.

The Tenants are seeking compensation as follows: \$819.00 for the disposal, purchase, and delivery of a new mattress and box spring; \$625.00 security deposit; and \$287.00 for moving costs.

The Tenants testified that near the end of June 2012, the Landlord informed them they had to vacate the rental property at the end of August 2012. They stated that they attempted to discuss their desire to stay in the unit but the Landlord told them he had already rented the unit out to new tenants as of September 1, 2012 so they had no choice but to move out. They argued they would not have suffered moving costs had they been able to stay in the unit.

The Tenants confirmed they vacated the property by September 1, 2012 and provided the Landlord with their forwarding along with the keys that were mailed to the Landlord mid September 2012. They attended the Landlord's residence to request the return of their deposit however the Landlord refused to return the full amount. The discussion ended with them advising that they would be making application for dispute resolution for the return of the deposit.

The Tenants submitted that when they moved out of the unit they noticed their mattress and box spring were covered in mold. They recall the Landlord telling them that two other people, (the Landlord's son and another tenant), had problems with moldy mattresses. They said the Landlord explained that it was a specific type of mattress that would mold and that it was not his responsibility.

The Landlord confirmed that he did not complete the move in or move out condition inspection reports and argued that it was because the Tenants were in a hurry to leave. He did not offer the Tenants two dates and times to schedule the move out inspection and he did not issue a final notice of inspection.

The Landlord confirmed the following: he received the Tenants' address and keys by mail in mid September 2012; he has not returned the deposit; he does not have the Tenants' written permission to keep the deposit; and he has not made application for dispute resolution to obtain an Order authorizing him to keep the deposit.

The Landlord confirmed he told the Tenants that he had re-rented the unit and that he had had discussions with them about mattresses with a plastic underlay that are prone to mold issues. He argued that the suite does not have a moisture problem as the unit is above ground level.

The Tenants stated that they did not seek a remedy to stay in the rental unit as they were not aware they could fight to stay in the unit. The Tenants confirmed that they did not submit documentary evidence to support the amounts being claimed for moving costs and the replacement mattress and box spring.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After careful consideration of the evidence before me I find there to be insufficient evidence to prove the Landlord breached the Act. Furthermore, in the absence of receipts, I find there to be insufficient evidence to prove the alleged costs incurred by the Tenants to move and replace the bed. Accordingly, I dismiss their claims for costs for moving and to replace the mattress and box spring, without leave to reapply.

The evidence supports that the tenancy ended August 31, 2012 and that the Tenants provided the Landlord with their forwarding address by approximately September 15, 2012.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord was required to return the Tenants' security deposit in full or file for dispute resolution no later than September 30, 2012. The Landlord did neither.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenants have met the burden of prove and I award them return of double their security deposit plus interest in the amount of **\$1,250.00** (2 x \$625.00 + \$0.00).

The Tenants have partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$1,300.00** (\$1,250.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province 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: December 05, 2012.

Residential Tenancy Branch