



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 the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit and pet damage deposit, for a monetary order for money owed or compensation for damage or loss, 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.

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

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

I note that the person attending for the landlord is the owner of the listed company and is hereafter referred to as landlord.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the return of their security deposit and pet damage deposit, for a monetary order for other issues and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this 2 year, fixed term tenancy began on August 1, 2010, was to end on July 31, 2012, the tenants actually vacated the rental unit on August 2, 2012, that beginning monthly rent was \$2800.00, that the tenants paid a security deposit of \$1400.00 on June 3, 2010, and a pet damage deposit of \$1400.00 on July 24, 2011.

The tenants' monetary claim is in the amount of \$5905.80, comprised of their security deposit and pet damage deposit of \$1400.00 each, doubled, \$305.80 for rat infestation expenses and for recovery of the filing fee.

The parties agreed that the tenants provided their written forwarding address on June 25, 2012, on the tenants' notice to end the tenancy and that the landlord has returned the amount of \$912.80 from the tenants' security deposit and pet damage deposit. I note that the cheque for that amount was dated August 24, 2012, but that the statement of deductions accompanying the cheque was dated August 22, 2012.

The tenants claim that there was not a move-in condition inspection and no accompanying report. In further explanation, the tenant said that the landlord, who is the owner of the home, was the previous long-term occupant with his family. When the tenants arrived with their two moving vans, the landlord was not fully moved out. Later on, the tenants were allowed to move their personal property into the rental unit, when the landlord's personal possessions were still in the rental unit.

The tenant said that they began an inspection, but that shortly after the start of the inspection, the landlord's phone rang, the landlord appeared to have a conversation of a business nature and departed the home.

The tenant said that she kept reminding the landlord that an inspection was necessary, but that it never happened. The tenant also said it was a long period of time before the landlords removed their personal property.

The tenants said that they obtained a dog in the second year of the tenancy and paid the landlord a pet damage deposit. When queried, the tenant said that the landlord did not perform a condition inspection at the time the tenants acquired a dog and paid the pet damage deposit.

The tenants said that they did not agree to any deductions by the landlord and wanted a return of their two deposits.

In response the landlord disagreed that he received a phone call during an initial inspection and submitted that he did attempt to arrange a full inspection.

The landlord also referred to his written evidence, particularly a written account of the events surrounding the beginning of the tenancy, by an agent of the landlord. The agent did not appear at the hearing.

I note that the agent submitted the tenants moved into the rental unit the day the landlords vacated the property, the landlord asked if an inspection could be completed. The agent also submitted that she dropped off a note to the tenants on August 10 and 17 requesting to complete the inspection, but did not hear from the tenants. There was no copy of the notes included with the landlord's evidence.

As to the tenants' claim for rat infestation expenses, the tenants said that the landlord was out of town in December 2011 when they noticed rodents in the home, at which time they attempted to contact the landlord. The tenants said that they contacted the emergency number left by the landlord and that finally a pest control company did attend the rental unit. The tenant said that the pest control company put poison out, which meant the rats were allowed to die in the house. The tenant claimed the pest control company was not given authority to remove the rats, which meant leaving a stench in the home so strong they could not have full use of the home.

The expenses claimed by the tenants were for an ionizer company and products to remove the stench caused by the dead rats.

In response the landlord contended that he contacted the pest control company immediately upon learning from the tenants that there were rats in the home and told them to do anything necessary to remove the rats. The landlord said his bill from the pest control company was \$1400.00.

Evidence-

The tenants' relevant evidence included a timeline of events, the tenancy agreement, written notice to end the tenancy dated June 25, 2012, which included the tenants' forwarding address, a copy of the cheque for a portion of the two deposits, an accompanying statement of deductions, a letter from the landlord acknowledging receipt of the notice to end the tenancy, a letter dated December 23, 2011, to the landlord addressing the stench of the rats and the continuing rodent problem and receipts from the ionizer company and products used for the odor.

The landlord's additional relevant evidence included several letters to the tenants from the landlord, the tenancy agreement, and photographs.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit and pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord **must** pay the tenant double the security deposit and pet damage deposit.

In the case before me, the undisputed evidence shows that the landlord received the tenants' written forwarding address on or about June 25, 2012, the last day of the tenancy was August 2, 2012, when the tenants vacated the rental unit, the tenants have not agreed to any deductions from their security deposit or pet damage deposit, and the

landlord has not applied for arbitration claiming against the security deposit or pet damage deposit.

The landlord was therefore required to return the full amount of the tenants' security deposit and pet damage deposit by August 17, 2012.

However, in contravention of the Act, the landlord deducted an amount from the tenants' security deposit and pet damage deposit without authority prior to returning the remaining portion beyond August 17, 2012.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from a Dispute Resolution Officer, or with the written agreement of the tenants. Here the landlord did not have any such authority to keep any portion of the security deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or pet damage deposit, and under section 38 I must order the landlord to pay the tenants double their security deposit and pet damage deposit.

As to the tenants' claim for rat infestation expenses, in a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with 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 reasonable measures to mitigate their loss.

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

In weighing the evidence of both parties, I cannot conclude that the landlord was negligent or violated the Act regarding his requirements of addressing the rodent infestation. I find the landlord acted reasonably and promptly when he contacted a pest control company after the complaints from the tenants. Therefore I find the tenants have not met the second step of their burden of proof and I dismiss their claim for \$305.80.

I grant the tenants reimbursement of their filing fee of \$100.00.

I therefore find the tenants have proven a total monetary claim of \$4787.20, comprised of their security deposit of \$1400.00, doubled to \$2800.00, their pet damage deposit of \$1400.00, doubled to \$2800.00, the filing fee of \$100.00, less the amount previously paid to the tenants, \$912.80.

I grant the tenants a monetary order for \$4787.20 and it is enclosed with the tenants' Decision. This order is a legally binding, final order, and should the landlord fail to pay

the tenants this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

Conclusion

The tenants have proven a total monetary claim of \$4787.20 and I have granted them a monetary order in that amount.

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: December 17, 2012.

Residential Tenancy Branch