



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD, SS

Introduction

This hearing dealt with an application by the landlord seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to a monetary order for cleaning and repair costs?

Background and Evidence

The tenancy began on or about October 1, 2011 and ended on June 30, 2012. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$700.00.

The landlord gave the following testimony; a condition inspection report was not conducted at move in or move out, on May 25, 2012 the tenant gave the landlord written notice to end the tenancy and that they would be vacating the suite on June 30, 2012, the tenants were responsible for maintaining the yard and to pay the costs of the utilities as part of the tenancy agreement minus a portion for when the landlord resided in the “nanny suite “of the house, the tenants left the house; dirty, garbage everywhere, and the yard a total mess, seeks the recovery of costs to clean the unit, remove the garbage, clean the yard and the recovery of unpaid utilities.

The tenant's agent gave the following testimony; was present at move in and move out of the subject tenants and no walk thru inspection was ever conducted, the tenants left the unit cleaner than when they received it, agrees that the tenants were responsible for their share of the utilities but does not agree with the calculations submitted by the landlord, the tenants feel they have paid they fair share and more, feel the landlords claim should be "dropped completely".

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

As the landlord is the sole applicant in this matter I will address each of his claims and my findings as follows;

First Claim- The landlord is seeking \$772.80 for concrete repair, \$25.00 X 6 hours = \$150.00 for cleaning the unit, \$25.00 X 5 hours= \$125.00 for garbage removal, \$25.00 X 2 hours= \$50.00 for taking the garbage to the dump, \$13.25 for dumping fees, and \$91.60 for lawn care for a grand total of \$1202.65. Both parties agree that neither a move in or move out condition inspection report was conducted.

The landlord was unable to provide any documentation, photos or receipts that would have given a "snapshot" of the condition of the unit when the subject tenants moved in. The tenants' agent along with a written submission of the tenants adamantly disputes the claims made by the landlord. At one point the landlord contradicted his original position in regards to the unit and stated it was "decent". I am unable to ascertain the changes, if any in the condition of the unit from move in to move out. I spent some time explaining the importance of the condition inspection report with the landlord and how

it's a vital part of any tenancy. He indicated he wasn't aware of them but understood his responsibility. Section 23 and 24 of the Act clearly address this issue.

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) **The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the insufficient evidence before me, I dismiss this portion of the landlord's application.

Second Claim- The landlord is seeking \$766.88 for unpaid utilities. The tenants adamantly dispute this claim and feel that they have in fact paid more than their fair share. The landlord submitted some utility bills for the hearing. However the landlord did not provide a clear and concise breakdown of the amount payable by the tenant's. The landlord's calculations were inconsistent for each type of utility and were not helpful. As the applicant; the landlord bears the responsibility of providing the evidence in a clear and understandable manner. The unsigned tenancy agreement is convoluted and raises more question than it answers. A tenancy agreement must clearly outline the rights and responsibilities for both parties. The cost a tenant must bear is perhaps one of the most important terms of a tenancy agreement that must be spelled out. Multiple attempts over the two hearing dates were afforded to the landlord to explain his calculations and to how he came to those numbers. Each time the landlord attempted to explain the formula to how he arrived at those numbers; the criteria slightly changed. Based on the

inconsistent unclear and at times contradictory testimony provided by the landlord, I dismiss this portion of the landlord's application.

The landlord has not been successful in his application.

Conclusion

The landlord's application is dismissed in its entirety. The landlord is to return the security deposit back to the tenants forthwith.

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: January 15, 2013.



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca