



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit and for money owed or compensation for damage or loss, for 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.

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.

I have reviewed all evidence and testimony 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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began July 1, 2012, ended on October 6, 2012, monthly rent was \$1000.00 and the tenants paid a security deposit of \$500.00 at the beginning of the tenancy.

The rental unit was in the basement suite, with the landlords residing in the upper suite.

The landlord filed an application for dispute resolution within nine (9) days of the end of the tenancy, claiming against the tenants' security deposit. I note that the landlord used the tenants' forwarding address provided by the tenants.

The landlord confirmed the tenants' statement that there was no incoming or outgoing condition inspection report.

The landlord's monetary claim is \$2072.72, for damage to the sewer pump, which required a replacement.

In support of his application, the landlord said that the rental unit was serviced by a sewer pump and was for the exclusive use of the basement suite. The landlord said the pump was replaced in 2008 and that within a month of the tenants' occupancy, the pump developed problems.

The landlord said he had a plumber attend the rental unit, and that the pump was cleared of debris; however the plumber was not sure if this would solve the problem.

According to the landlord, the pump repair failed, resulting in a pump replacement.

The landlord said that the plumber said that there were "foreign objects" in the sewer line and implied that the foreign objects were "inappropriate."

When questioned, the landlord confirmed that he did not obtain a statement from the plumber describing the objects or assessing fault.

The tenant submitted that when they moved in, the landlords were out of town, which resulted in no inspection of the premises.

According the tenants, within 2 weeks of the tenancy beginning, they noticed that the drains were stopping up, as water collected up to their ankles in the shower.

The tenants said they notified the landlord, but that his solution was to provide a drain clearing product.

The tenant said that they never put anything in the toilet, other than bodily waste as instructed by the landlords.

The tenant also said she talked with the plumber, who said that he would notate on his report had there had been any inappropriate items in the sewer line.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlords 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.

The landlord claimed that the tenants' actions caused irreparable damage to the sewer pump and the tenants said they used the toilet and plumbing properly and according to the landlord's instructions.

The tenants said they experienced almost immediate problems with the plumbing and reported it to the landlord.

Due to the conflicting oral evidence, I therefore find the landlord submitted insufficient evidence that the tenants damaged the sewer pump or that they used the plumbing system improperly.

In reaching this conclusion, the landlord submitted a version of events and the tenant submitted a differing, equally probable version of events.

Neither party had any supporting witness statements or other evidence to rely upon to support their respective positions.

I find that, in any dispute when the evidence consists of conflicting and disputed verbal testimony, in the absence of independent documentary evidence, then the party who bears the burden of proof, the landlord in this case, cannot prevail on the balance of probabilities. Disputed oral testimony does not sufficiently meet the burden of proof.

I therefore find the landlords have not met the second step of their burden of proof and I dismiss their application for a monetary order, 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 sections 24 and 36 of the Act, when a landlord fails to conduct a condition inspection and 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 landlord was 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 tenant's written forwarding address, according to section 38 of the Act.

It is undisputed that the tenancy ended October 6, 2012, and the landlord had the tenants' forwarding address no later than October 15, 2012, at the time he filed his

application using the tenants' forwarding address. Therefore the landlord was required to return the full amount of the security deposit to the tenants by October 30, 2012. Because the landlord's 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 tenant's written forwarding address or the end of the tenancy, section 38 of the Act requires that the landlord pay the tenants double the amount of their security deposit.

I therefore find the tenants are entitled to a monetary order in the amount of \$1000.00, comprised of their security deposit of \$500.00, doubled.

I grant the tenants a final, legally binding monetary order in the amount of \$1000.00, which I have enclosed with the tenants' Decision.

Should the landlord 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.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenants are granted a monetary order in the amount of \$1000.00.

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: January 14, 2013

