



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF
 MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlords and the Tenants.

The Landlords filed on January 22, 2013, seeking a Monetary Order 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 Tenants.

The Tenants filed on November 5, 2012, seeking the return of double their security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other 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, respond to each other's testimony, and to provide closing remarks. 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 Landlords be granted a Monetary Order?
2. Should the Tenants be granted a Monetary Order?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: some e-mails between the parties between October 7 and January 21, 2013.

The Tenants submitted documentary evidence which included, among other things, copies of: their written statements; the October 11, 2012 letter providing the Landlord with their forwarding address; the tenancy agreement; the Landlords' October 28, 2012

letter and a cheque for partial return of the deposit; electronic communication between the parties; and Canada Post receipts.

The parties confirmed they entered into a month to month tenancy that began on September 1, 2007. Rent was payable on the first of each month in the amount of \$900.00 and on August 13, 2007 the Tenants paid \$450.00 as the security deposit. No move in or move out inspection reports were completed. The Tenants provided their forwarding address, in writing, to the Landlord on October 11, 2012.

The Landlord confirmed receipt of the Tenants' forwarding address however he did not know the exact date it was received. He sent the Tenants a cheque for \$169.86 on October 28, 2012 as partial refund of their security deposit. He confirmed that he did not have the Tenants' written permission to keep part of the security deposit; he does not have an Order issued by the *Residential Tenancy Branch* authorizing him to retain part of the deposit; and he did not make an application to keep the deposit.

The Landlord stated that he was seeking \$900.00 in compensation as that was an amount equal to one month's rent. He confirmed that his application was for compensation for damage to the dryer, damaged window coverings, and for loss of rent as the Tenants did not vacate the property at the end of the month. The Landlord submitted that he advertised the unit for rent sometime near the beginning of November 2012 and re-rented the unit as of December 1, 2012 for \$800.00 per month.

The Landlord advised that when they purchased the house they took possession on September 1, 2007 the same date the Tenants began their tenancy. The house is approximately 50 years old. The dryer and window coverings came with the house and the Landlord did not know the age of either item. The Landlord submitted that the damage to the dryer was the result of wood screws being installed to hold the door on through the hinges. The house was listed for sale in September 2012. The Landlord stated that the repairs were completed; however he did not provide evidence to support that, such as receipts.

The Tenant stated that in addition to their written submissions they wanted to point out that the Landlord did not act in a manner that would have resulted in re-renting the unit in a timely manner. She confirmed providing their notice to end tenancy almost two months prior to the end of September 2012. She noted that the Landlords made no effort to attend the unit until October 5, 2012, even though they had vacated by September 30, 2012. Furthermore, the Landlords did not respond to their October 5, 2012, message that everything was cleaned until October 18, 2012 and they did not advertise the unit until November.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7

and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the aforementioned, the documentary evidence, and on a balance of probabilities I find as follows:

Landlord's application

In the absence of a move in and move out condition inspection report form or receipts to prove repairs, and in the presence of the disputed verbal tenancy, I find the Landlords provided insufficient evidence to prove the Tenants caused damages, above normal wear and tear, during their tenancy.

Furthermore, there is insufficient evidence to prove the exact date the Landlords began to advertise the unit; although the Landlord affirmed they did not advertise until sometime in November 2012, even though they were in receipt of the Tenants' notice to end their tenancy sometime in July 2012. Accordingly, I find there is insufficient evidence to prove the Landlords suffered a loss of rent due to the Tenants' actions, or due to the condition of the property, rather than their own delay in attending or advertising the unit.

Based on the foregoing, I find there is insufficient evidence to meet the burden of proof, as listed above, and I dismiss the Landlords' claim, without leave to reapply.

The Landlords have not been successful with their claim; therefore they must bear the burden of the cost to file their application.

Tenants' application

The evidence supports there were no condition inspection report forms at move in or move out. This tenancy ended on September 30, 2012, and the Landlord received the Tenants' forwarding address, in writing, on or before October 16, 2012, five days after it was mailed in accordance with section 90 of the Act.

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 in writing, 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 Landlords were required to return the Tenants' security deposit in full no later than October 31, 2012.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are 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.

Accordingly, I find the Tenants have succeeded meeting the burden to prove their claim and I award them the return of double their security deposit plus interest, as follows:

Double the security deposit (2 x \$450.00)	\$900.00
Interest Owed from August 13, 2007	<u>9.40</u>
TOTAL amount due to the Tenants	\$909.40

Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$909.40**. The Tenants are at liberty to cash the October 23, 2012 cheque for \$169.86 and collect the balance of \$739.54 from the Landlords. In the event that the Landlords do 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: February 01, 2013

Residential Tenancy Branch

