



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, MND, MNDC, FF
For the tenants: MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to 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 applications or the evidence.

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

Preliminary Issue-The tenants said that they did not receive the landlord’s evidence until the day prior to the hearing due to an incorrect address listed by the landlord. When questioned, however, the tenants agreed that they did not want an adjournment of the hearing due to the late submission and that the hearing should proceed.

Issue(s) to be Decided

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

Are the tenants entitled to a monetary order comprised of their security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy was to begin on October 1, 2011, monthly rent was \$1600.00 and the tenants paid a security deposit of \$800.00 at the beginning of the tenancy. The landlord said she allowed the tenants to move in on September 15, 2011.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenants' security deposit.

Landlord's application-

The landlord's monetary claim listed on her application for dispute resolution was \$2400.00, without providing any full particulars as to the breakdown of that claim, as required under section 81 (1)(b) of the Act. When questioned, the landlord said that she was informed that she could submit a "ballpark" figure for her request for monetary compensation in her application for dispute resolution, and submit a detailed list later.

The landlord did provide breakdown of her claim within the body of her written submissions, received by the Residential Tenancy Branch ("RTB") on January 31, 2013. The listing totalled \$2639.26, including a charge for painting for \$1350.00, cleaning for \$200.00, a gas bill for \$368.00, rent for October in an unknown amount, supplies for \$348.59, bathroom sink for \$125.00, and a hood filter for the stove for \$34.45.

I informed the landlord that I would not be able to comport the breakdown amount to the amount of her monetary claim listed in her application. I additionally informed the landlord that I would offer to dismiss her application with leave to reapply, or go forward on certain items listed in her breakdown of costs, at her choice.

The landlord made the decision to go forward on her request for compensation for the painting, the unpaid rent for November 2012, and the gas bill and waive the balance of the list of her monetary claim.

*Painting charge-*The landlord submitted that the rental unit required painting and nail and chip repair at the end of the tenancy, due to the actions and neglect of the tenants. Those actions included smoking, leaving holes in the walls and leaving the walls filthy.

The landlord claimed she received 3 estimates and chose the lowest of the 3.

The landlord submitted photographs of the rental unit, but was unsure of the exact date the photos were taken.

In response, the tenants denied the walls were filthy and in bad shape. The tenants admitted that there were some nail holes, but other than that, the walls were in the same condition as at the beginning of the tenancy.

Gas bill-The landlord submitted that the tenants were responsible for paying the natural gas charges for the home, which was the heat, as this was not included in their rent. In explanation, the landlord said she was unaware that the tenants never put the gas account into their name until the end of the tenancy, when she saw a bill at the rental home on November 2, 2012.

When questioned, the landlord said she has not paid the bill as she was informed that it would take several months to receive a billing statement.

In response, the tenants said they were unaware that there was natural gas being supplied to the home as this was never discussed with them during the entire tenancy. The tenants said they understood they were responsible for electricity and heat, and thought that the heat was electric as they turned on an electric switch and adjusted an electric thermostat.

The tenants submitted another reason they believed the heat was electric was due to the unusually high hydro costs.

Rent for November 2012-The landlord said the tenants were to vacate the rental unit by October 31, 2012; however they did not vacate until November 4, 2012. As a result, the landlord said she is owed rent for the 4 days in November.

In response, the tenants submitted that they were gone from the rental unit by November 2, 2012; however, November 4, 2012, was the first mutually agreeable date the parties could meet at the rental unit to leave keys and walk through the rental unit.

The landlord's relevant evidence included photographs of the rental unit, a written response to the tenant's evidence, tenancy agreements, receipts and invoices, the gas company statement and communication between the parties.

Tenants' application-

The tenants' claim is in the amount of \$1600.00, comprised of their security deposit of \$800.00, doubled, and for recovery of the filing fee.

In support of their application, the tenant said that they provided the landlord their written forwarding address in a letter sent via registered mail on November 7, 2012. The tenant said they confirmed that the landlord received the registered mail on November 14, 2012, and that she has not returned any portion of their security deposit.

In response, when questioned, the landlord ultimately agreed that she received the tenant's forwarding address via registered mail, on November 14, 2012, though denying the same earlier in the hearing, contending she received only a verbal notification.

The landlord filed an application for dispute resolution on November 13, 2012.

Analysis

In a claim for damage or loss under sections 7 and 67 of the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon 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 all reasonable measures to mitigate their loss.

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

Landlord's application-

Painting costs-A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the absence of a condition inspection report or other independent evidence depicting the state of the rental unit both before and at the end of this tenancy, I find there to be insufficient evidence to meet the burden of proof establishing that the tenants damaged or left the rental unit in an unclean state. A condition inspection could easily reveal such condition and contents of the rental unit.

Additionally, under the Residential Tenancy Branch Policy Guidelines, tenants are allowed to put up pictures in their rental unit, although the landlord may set rules as to how this can be done. I find that the landlord failed to submit evidence that these rules were conveyed to the tenants and that the tenants are not responsible for filling the holes or the cost of filling the holes.

I therefore dismiss her claim for paint and wall damages to the rental unit in the amount of \$1350.00.

Unpaid rent-I find the evidence shows that the tenants were to have vacated the rental unit by October 31, 2012, but failed to vacate until November 2, 2012. In reaching this conclusion, the landlord said she was in the rental unit on November 2, 2012, and I find no other evidence of the tenants remaining in the rental unit beyond November 2.

I therefore find that the tenants were overholding in the rental unit for two days in November and that the landlord is entitled to a loss of revenue for those two days, in the amount of \$105.20 ($\$1600.00 \text{ monthly rent} \times 12 \text{ months} = \$19,200.00 \text{ per year} \div 365 \text{ days} = \$52.60 \text{ daily rate for 2 days}$).

Gas bill-The landlord has not supplied evidence that she has paid a gas bill and therefore I find that she has not met step one of her burden of proof. I therefore dismiss her monetary claim for \$368.00.

Tenants' application-

When a landlord fails to offer opportunities to inspect the rental unit both at the beginning and end of the tenancy and properly complete a condition inspection report, pursuant to section 35 of the Act, the landlord's claim against the security deposit for damage to the property is extinguished under section 36 of the Act. In this case, the landlord applied to keep the security deposit in partial compensation of monetary claims for damages to the property as well as for lost revenue for November 2012.

As the landlord's claim was not only for damage to the property, I find that the landlord complied with the requirement under section 38 and Residential Tenancy Branch Policy Guideline 17 (9) to make an application within 15 days of receiving the tenants' written forwarding address to keep the deposit. The tenants are therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application.

However I find the tenants are still entitled to recover their security deposit as provided hereafter.

As both parties' applications for dispute resolution contained merit, I do not award either party recovery of the filing fee.

Conclusion

The landlord has proven a monetary claim of \$105.20 for lost rent due to the tenants' overholding of two days in November 2012.

The tenants have proven a monetary claim of \$800.00, comprised of their security deposit.

I have therefore deducted or offset the landlord's monetary claim of \$105.20 from the tenants' monetary entitlement of \$800.00 and I grant the tenants a final, legally binding monetary order in the amount of \$694.80, which I have enclosed with the tenants' Decision.

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. Costs of enforcement may be recoverable from the landlord.

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: February 15, 2013

Residential Tenancy Branch

