



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlords: MNSD, MND, 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 landlords applied for authority to retain the tenants' security deposit, a monetary order for damage to the rental unit, and for recovery of the filing fee.

The tenants applied for a return of their security deposit 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 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 application or the evidence.

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

Issue(s) to be Decided

1. Are the tenants entitled to a return of their security deposit and to recover the filing fee?
2. Are the landlords entitled to retain the tenants' security deposit, to a monetary order, and to recover the filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on April 1, 2011, ended on July 31, 2012, monthly rent was \$1750.00 and the tenants paid a security deposit of \$1000.00 at the beginning of the tenancy, which is more than the allowable amount under the Act.

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 landlords have not returned any of the tenants' security deposit.

The parties were in dispute resolution earlier on the same issues, with a hearing held on November 29, 2012.

The parties' respective applications for dispute resolution were dismissed with leave to reapply.

The Decision recorded from the November 29, 2012, hearing stated that as of that date the tenants had not provided the landlords with their written forwarding address; however the Arbitrator specifically ordered that the address provided by the tenants at that hearing and recorded in the Decision was the tenants' mailing address for purposes of the Act.

Landlords' application-

The landlords' monetary claim totals \$3607.60, which they claim is for damages by the tenants to the rental unit. The landlords seek to retain the tenants' security deposit.

The landlord said that although there was not a condition inspection report, the parties had a walk-through of the rental unit before and after the tenancy.

The landlord submitted that the tenants damaged the hardwood floors, requiring repair. The landlord said the tenants agreed to pay for the costs, and therefore the landlord asked for quotes.

The landlord also submitted that the tenants left the carpet and the rental unit dirty, both of which needed to be cleaned.

The landlord claimed that the tenants broke a bathroom window, which required replacement, and that the deck had to be pressure washed.

In response, the tenants denied leaving any portion of the rental unit unclean, and left the rental unit in as good or better shape as when the tenancy started.

The tenant denied having a conversation with the landlord agreeing to pay for costs associated with the hardwood floors.

The tenants contended that the landlords forced them to move as the entire yard was being refurbished, which meant that excavators and backhoes were always in the yard. The tenants submitted that each night, they had to sweep rocks off the deck, and argued that the rocks kicking up from the workers most likely damaged the window.

Tenants' application-

The tenants' monetary claim is for their security deposit of \$1000.00 and for recovery of the filing fee.

In support of their application, the tenant said that she gave their forwarding address verbally to the landlord on July 31, 2012.

The tenant further stated that their forwarding address was confirmed at the hearing on November 29, 2012, and due to that, there was no need to send the landlord any further notifications of a forwarding address.

The tenant said they have not agreed to any deductions from their security deposit, that there was no damage to the rental unit, and that they have not been returned any portion of their security deposit.

In response the landlord agreed that she knew the tenants' address via her internet search prior to their last hearing, but that the address was a business address. Further the landlord said that the tenants' business address was still the only address she had.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the both parties 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Landlord's application-

Under sections 24 and 35 of the Act, when a landlord fails to conduct a move-in condition inspection and move-out condition inspection and 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 prepare and complete condition inspection reports, they lost their right to claim the security deposit for damage to the property.

Additionally, I also find the landlords submitted insufficient evidence that the tenants left the rental unit in a state which required repairing or remediation.

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 landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlords failed to meet their obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

I do not find the receipts and quotes provided by the landlords to be persuasive or convincing.

I therefore dismiss the landlords' application, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss their request for recovery of the filing fee.

Tenants' application-

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 landlords were 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 tenants' written forwarding address, according to section 38 of the Act. The failure of the landlord to comply with this provision requires the landlord to pay the tenant double the amount of their security deposit.

In the case before me, the tenancy ended on July 31, 2012, and the landlords were deemed served the tenants' forwarding address for purposes of the Act via the

November 29, 2012, Decision by the Arbitrator. Therefore the landlord was required to return the full amount to the tenants within 15 days of November 29, 2012.

As the landlord failed to return the tenants' security deposit, I therefore find the tenants are entitled to a monetary award in the amount of \$2000.00, comprised of their security deposit of \$1000.00, doubled.

I also find the tenants are entitled to recovery of the filing fee of \$50.00, due to their successful application.

Conclusion

The landlords' application is dismissed.

The tenants have established a monetary claim of \$2050.00, comprised of their security deposit of \$1000.00, doubled, and for recovery of the filing fee of \$50.00.

I therefore grant the tenants a final, legally binding monetary order in the amount of \$2050.00, which I have enclosed with the tenants' Decision.

Should the landlords 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 such enforcement may be recoverable from the landlords.

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: March 26, 2013

Residential Tenancy Branch

