



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNSD, MNDC, FF
 Tenants: MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was conducted via teleconference and was originally convened on January 9, 2013 at which time one agent for the landlord and the male tenant attended. Due to time constraints the original hearing was adjourned and reconvened on March 5, 2013 at which time two agents for the landlord and both tenants attended.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit; for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided into evidence a copy of a tenancy agreement signed by the parties on September 22, 2011 for an 11 month and 15 day fixed term tenancy beginning on October 15, 2011 for a monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$925.00 paid. The tenancy ended on September 30, 2012.

The tenants contend that at the end of the tenancy the landlord refused to allow access to the rental unit to complete the move out condition inspection with the landlord. The tenants have submitted into evidence an audio recording of the discussions held by the parties at the inspection.

The tenants submit the male tenant arrived early for the inspection and entered the unit and noticed tape indicating damaged areas when the landlord's agents arrived. The tenants submit that prior to the start of the recording the female agent told the male tenant that he was not allowed in the unit.

He goes on to explain that when asked about doing the inspection the agent stated that it was already completed and that they would not do any business with the tenant in the apartment.

The landlord submits the tenant was being difficult prior to the recording being started and that is why she did not want to be in the unit with him. The recording provides that the female agent repeatedly states that all the tenant has to do is sign the inspection report indicating whether he agrees or not with the assessment.

The recording also provides that the tenant repeatedly indicates that he is not going to sign something that indicates there are damages without seeing the areas that the landlord indicated were damaged or required cleaning.

The recording also provides the landlord is repeatedly telling the tenant that she will not let him in to the rental unit. The tenants submit that as a result of the landlord's refusal to let the male tenant in to complete the move out inspection the landlord has extinguished their right to claim against the security deposit.

The parties agree the tenants owe the landlord for blind cleaning in the amount of \$85.40. However the landlord also seeks compensation for cleaning the rental unit and for repairs to the master ensuite tub.

The Condition Inspection Report states the unit required the following cleaning:

- Kitchen – ceiling, walls, floors, cabinets, counters, closets, cupboards, tiles, stove and microwave and included stains in the cabinets, counters, closets and cupboards;
- Bedroom Tiles
- Bathroom – ceiling, walls, cabinets, counters, doors, and light fixtures.

The report also indicates there is a chip and scratches in the bathtub in the bathroom.

The landlord has provided photographs of areas in the kitchen and bathroom. The photographs include pictures of the oven; some cupboards; exhaust fan; inside of the microwave; a drawing that the landlord states was found in the cupboard; tiles and grout lines; details of the sink include the faucets and overflow; the bathtub include marks from a pressure mounted shelving unit in the bathroom.

Analysis

I accept by the testimony of both parties that the tenants agree to the landlord's charges for blind cleaning in the amount of \$85.40.

Section 35 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit. The section goes on to say the landlord may make the inspection and complete and sign the report without the tenant if the landlord has offered the tenant at least two opportunities for the inspection and the tenant does not participate or the tenant has abandoned the rental unit.

I accept the parties had agreed to a set time to complete the inspection and that both parties attended. As the two parties dispute the events that lead up to the tenant's non-participation in the inspection, I find I must rely on additional evidence to understand what occurred. As such, I rely primarily on the only additional evidence that was provided by the parties in the form of the tenant's audio recording.

From the recording I find the landlord refused to allow the tenant into the rental unit to complete the inspection together. As I have found the landlord refused the tenant the opportunity to participate in the move out inspection I find the landlord has not complied with Section 35 of the *Act* and pursuant to Section 36 the landlord has extinguished their right to claim against the security deposit for damage to the rental unit.

Residential Tenancy Policy Guideline 17 stipulates that unless a tenant has waived the doubling of the deposit, the arbitrator will order return of double the deposit if, among other things, the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*. As such, I find the tenants are entitled to double the amount of the security deposit.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As I have found the move out condition inspection without the tenants despite their presence at the inspection, I find the Condition Inspection Report to be unreliable to record the condition of the unit at the end of the tenancy. However, the landlord has provided photographic evidence of the condition and based on those photographs, I find the tenants had left the unit reasonably clean as required under Section 37.

I find the photographic evidence submitted does not show a rental unit requiring much more than some minor touch ups and the *Act* does not imposed a standard of clean other than reasonably clean. Therefore, I find the landlord has failed to establish the tenants violated their obligations under Section 37, in regard to cleanliness. I dismiss this portion of the landlord's claim.

And finally, as the tenants dispute the damage to the tub; the landlord's failure to allow the tenant to participate in the move out inspection; and my finding of unreliability of the documented Condition Inspection report, I find the landlord has failed to establish the tenants caused any damage to the tub. I dismiss this portion of the landlord's claim.

Conclusion

I find the tenants are entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,814.60** comprised of \$1,850.00 double the security deposit and the \$50.00 fee paid by the tenants for this application; less the agreed upon \$85.40 for blind cleaning.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As noted above, I have dismissed the majority of the landlord's claim and as such I also dismiss their claim to recover the filing fee for their Application.

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: March 11, 2013.

Residential Tenancy Branch



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