



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MND, MNSD and FF
Tenants: MNSD and FF

Introduction

This hearing addressed applications by both the landlords and the tenants.

The landlords' application of December 18, 2012 sought a monetary award for the cost of repainting the rental unit, recovery of the filing fee for his proceeding and authorization to retain the security deposit in set off against the balance owed.

The tenants' application of February 4, 2013 sought an order for return of their security deposit in double and recovery of their filing fee. In addition, the tenants seek to recover bank charges for cancelling post-dated cheques.

Issue(s) to be Decided

The landlord's application requires a decision on whether she is entitled to a monetary award for the cost of painting the rental unit and authorization to retain the security deposit in set off.

The tenants' application requires a decision on whether they are entitled to return of the security deposit, whether the amount should be doubled, and whether they are entitled to compensation for the cost of cancelling cheques.

Claims in damages require that several factors be taken into account: whether damages are proven and attributable to the tenant, the comparison of move-in vs. move-out condition inspection reports, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Claims for damage or loss under section 7 of the *Act* require that the claimant do whatever is reasonable to minimize the claimed loss.

Background, Evidence and Analysis

This tenancy began on February 1, 2012 and ended on November 30, 2012. Rent was \$1,300 per month, due on the 1st, and the landlord held a security deposit of \$650 paid on January 7, 2012.

The parties concur that there were no move in or move out condition inspection reports and they agreed to accept December 5, 2012 as the date on which the landlord received the tenants' forwarding address. On that date, the tenants wrote to the landlord acknowledging receipt of \$300 of the deposit and putting the landlord on notice of the need for her to make application to claim or return the balance within 15 days.

Tenant's Claim

Security deposit - \$1,000. The tenants arrived at this figure by asking for double the \$650 deposit, \$1,300, less the \$300 which was returned to them on or before December 5, 201. However, as the parties have agreed to December 5, 2012 as the date on which the landlord received the forwarding address, I find that she met the requirement of section 38(1) of the Act by making application within 15 days of receiving the forwarding address. Therefore, the award cannot be doubled. Prior to consideration of the landlord's claim, I find that the landlord is obliged to return the \$350 of the deposit retained without consent to the tenants.

Bank charge to cancel post dated cheques - \$12.50. The landlord concurred that due to a banking error, the tenants' post dated cheque for December 2012 had been deposited into her account. Although the error was remedied and the tenants' funds returned to them, I find that they were prudent in cancelling the remaining cheques and the landlord must compensate them for the cost of doing so.

Filing fee - \$50. Having found merit in the tenants' application, I find they are entitled to recover their filing fee from the landlord.

Landlords' Claims

Repainting the rental unit – \$350. The landlord makes claim, supported by a number of photographs, that the tenants had put an excessive number of holes in the wall to hang decorative items.

The tenants submitted two photos taken at the beginning of the tenancy showing a smattering of dark matter on the baseboards one corner of a room and a small puckering mark on one wall.

The landlord stated that the rental unit had been painted at the beginning of the tenancy and required the repainting at the end which she was able to have done by the building manager at a bargain price. On the basis of the photograph evidence, I find that the number of patches on the wall is beyond the norm and that the tenants are partly responsible for the cost of painting.

Standard depreciation tables place the useful life of interior paint at four years. Therefore, I have depreciated the award on this claim by one-quarter for that reason, and by a further one-quarter for normal wear and tear, and allow \$175 on the claim.

The tenants submitted that, without condition inspection reports, the landlord's right to claim against the deposit is extinguished by section 24(2) of the *Act*. However, section 38(4)(b) continues the director's authority award a portion of the deposit as follows:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Filing fee - \$50. As the landlord was in non-compliance with the legislation in not returning the tenants' cheques at the end of the tenancy, and by failing to arrange and properly complete move-in and move-out condition inspection reports which contributed to this dispute, I decline to award her filing fee.

Thus, I find that accounts balance as follows:

Award to tenants		
Unreturned portion of security deposit	\$350.00	
Bank charge to cancel post dated cheques	12.50	
Filing fee	50.00	
Sub total	\$412.50	\$412.50
Award to landlord		
One-half of painting cost	\$175.00	- 175.00
Balance owed by landlord to tenants		\$237.50

Conclusion

The tenants' copy of this decision is accompanied by a Monetary Order for **\$237.50**, enforceable through the Provincial Court of British Columbia, for service on 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*.

Dated: March 12, 2013

Residential Tenancy Branch

