



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The rental unit which is the subject of this dispute is located in the basement of a house. A separate rental unit is located in the upstairs portion of the house.

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on November 1, 2009. Monthly rent of \$975.00 was due and payable in advance on the first day of each month, and a security deposit of \$487.50 was collected. Effective December 1, 2011 the rent increased to \$997.42. The tenants were responsible for paying ½ the total utilities (gas & hydro) billed to the larger house. A move-in condition inspection report was not completed.

The tenants gave written notice dated October 31, 2012 of intent to end tenancy effective December 1, 2012. A move-out condition inspection report was not completed with the participation of both parties. However, the landlords submitted into evidence the first page of what is a 4 page move-out condition inspection report available to the

public on the Residential Tenancy Branch website. The page submitted bears manual notations made by the landlords which speak to the tenants' broad undertaking to ensure that the unit, including the carpets and appliances, would all be left clean.

During the hearing the tenants testified that while they disputes the landlords' claim for cleaning costs, they do not dispute the landlords' claim for unpaid utilities in the amount of \$313.50.

As to provision of a forwarding address, the tenants claims that a note was hand delivered to the landlords' mailbox on or about December 13, 2012, which identified the forwarding address and included instructions for repayment of the security deposit. The landlords do not dispute this but testified that the forwarding address given was the same address as the rental unit. While there is no copy of this note in evidence, the parties do not appear to dispute that the note states that a neighbour would act as a go-between in relation to the return of the security deposit after it was delivered to the rental unit mailbox by the landlords. However, in this regard, the landlords testified that the neighbour in question declined to get involved.

The tenants filed their application for dispute resolution on January 10, 2013. It was not until after the landlords received the tenants' hearing package in January 2013, when the landlords became aware of the tenants' current mailing address. Subsequently, the landlords filed an application for dispute resolution on January 22, 2013, which includes an application to retain the security deposit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guideline, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony, the various aspects of the respective claims and my findings around each are set out below.

TENANTS:

\$975.00 (2 x \$487.50) double the security deposit.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute

resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the security deposit.

The parties do not dispute that the forwarding address initially provided by the tenants was the same address as the rental unit. As well, there is no dispute that the forwarding address and related instructions were delivered by the tenants to the landlords' mailbox on or about December 13, 2012. However, the parties appear to have different views around the third party neighbour's willingness to be a go-between in relation to the prospective repayment of the security deposit via the unit mailbox. Further, the neighbour not present at the hearing to give testimony, and neither was there a written submission from her before me in evidence.

In the result, I find that the tenants informed the landlords of their forwarding address by way of service of their hearing package. As previously noted, the tenants' application was filed on January 10, 2013, and the landlords' application was filed 12 days later on January 22, 2013. Accordingly, I find that the landlords filed the application to retain the tenants' security deposit within 15 days of being informed by the tenants of their forwarding address. In the result, I find that the tenants' application for compensation reflecting the double return of the security deposit must be dismissed.

LANDLORDS:

\$442.24: *cleaning in the unit.*

Section 37 of the Act speaks to **Leaving the rental unit at the end of tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the unit reasonably clean, and undamaged except for reasonable wear and tear,...

Other statutory provisions which have particular relevance to the circumstances of this dispute are as follows:

The Act

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

The Regulation

Part 3 – **Condition Inspections**, Sections 14/15/16/17/18/19/ 20 & 21.

Sections 24 and 36 of the Act provide, in part, that the right of a landlord to claim against a security deposit is extinguished if the landlord does not provide the tenant with “2 opportunities for inspection,” or “does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.”

In the absence of comparative results of move-in and move-out condition inspection reports, I find that the landlords have failed to meet the burden of proving entitlement to costs claimed for cleaning. Accordingly, this aspect of the application is dismissed.

\$313.50: utilities.

As the tenants do not dispute this aspect of the landlords’ application, I find that the landlords have established entitlement to the full amount claimed.

I order that the landlords retain **\$313.50** from the tenants’ security deposit of **\$487.50**, and repay the balance to the tenants in the amount of **\$174.00** (\$487.50 - \$313.50). Further, I hereby issue a **monetary order** in favour of the tenants to this effect.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$174.00**. Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court and enforced as an order of that Court.

The respective applications to recover the filing fee are both hereby dismissed.

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: April 03, 2013

Residential Tenancy Branch

