



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for money owed or compensation for damage or loss and the recovery of the filing fee. The Tenants have filed an application for a monetary order for the return of double the security and pet damage deposits and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?
Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that this Tenancy ended on January 31, 2013 and that an \$800.00 security and an \$800.00 pet damage deposits were paid and never returned. Both parties agreed that no condition inspection reports for the move-in or the move-out were completed and that a visual walkthrough was made for both.

The Landlord seeks a monetary order for \$1,455.00 which consists of \$300.00 for cleaning of the rental unit by the new Tenants, \$180.00 for Duct Cleaning (removal of dog hair from Ducts) and a \$975.00 quote for lawn replacement. The Tenant disputes the Landlord's claims and states that no condition inspection reports were made for either the move-in or the move-out. The Tenant also states that they were told after a walkthrough with the Landlord on January 31, 2013 that "everything was good". As well

the Tenants state that they were not responsible for the maintenance of the lawn that this function was performed by the Landlords through the Strata. The Landlords rely on submitted photographs of the rental unit, an email letter dated February 8, 2013 from the new Tenant estimating a \$300.00 charge for cleaning the rental unit which consisted of approximately 15 hours (no receipts/invoices), a quote dated March 18, 2012 for "backyard turf removal and installation" for \$998.45+HST and an invoice dated February 28, 2013 for "basic duct cleaning" of \$180.00. Both parties have also referred to numerous emails between the two and have both confirmed that email was the primary form of communication. The Landlord refers to several emails between the two parties from April 24, 2012 to June 4, 2012 regarding the lawn. The Tenants responds that after the "everything was good" on January 31, 2013 they attempted to contact the Landlords to recover the filing fee starting on February 2, 2013 and again in an email on February 20, 2013. Both parties confirmed that the Tenant provided their forwarding address on February 2, 2013 by email.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

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

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

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

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

I find based upon the evidence provided by both parties that the Tenancy ended on January 31, 2013 and that the Landlord received the Tenant's forwarding address by email on February 2, 2013. The Landlord has never filed for dispute resolution to dispute retaining the combined \$1,600.00 pet damage and security deposits, the

Landlords filed for dispute to recover the costs of damages/compensation on April 22, 2013. This is clearly beyond the allowed 15 day application period. Based upon the undisputed testimony I find that the Tenants have established a monetary claim of \$3,200.00 pursuant to Section 38 (6) of the Residential Tenancy Act.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Landlord has failed to provide sufficient evidence to prove their entire claim. The Landlord relies on an email from their new Tenant, "As far as the cleaning goes it took me about 15 hours over Friday & Saturday so I figured, \$300.00, unfortunately some of that is for cleaning supplies as most of the stuff I bought to clean our old place had to be used on Cook." The Landlord relies solely on the submitted photographs and I find that there is insufficient evidence of 15 hours worth of cleaning and as well the Landlord has not provided any details of the \$300.00 expense. The Landlord also relies on a quote for the \$975.00 lawn replacement. The Landlord has failed to provide sufficient details of an actual amount for the compensation being sought as no repair/replacement work has been done as of the date of this hearing. I also note that the quote is dated for March 18, 2012 which is sometime before the end of the tenancy on January 31, 2013. The Landlord has failed on these grounds and I dismiss these portions of the Landlord's claim.

The Landlord is successful in their claim for duct cleaning from the "Extreme Clean" invoice for \$180.00. The Landlord has provided a paid invoice as well as photographic evidence of hair in the ducts and both parties have confirmed that a pet was part of the Tenancy. The Tenant did not dispute the excessive amount of hair in the ducts. I find that the Landlord has established that general maintenance of the duct work required a cleaning, above and beyond what is normally required because of the pet.

The Tenant has established a monetary claim for \$3,200.00 and the recovery of the \$50.00 filing fee.

The Landlord has established a monetary claim for \$180.00 and recovery of the \$50.00 filing fee.

In offsetting these claims, I find that the Tenant is granted a monetary order for \$3,020.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$3,020.00.

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: May 22, 2013

Residential Tenancy Branch

