



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, for authority to retain the tenants' security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all 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.

Preliminary issue-The monetary claim listed in the landlord's application was the amount of \$900; however the landlord said that he submitted an amended application via facsimile showing that the amount of his monetary claim had increased to \$1009.

I note that the facsimiled evidence as contained in the file had just the first page of the landlord's amended application; however, the tenant acknowledged receiving the entire amended application and agreed that he understood that the landlord had increased his monetary claim to \$1009. I therefore have amended the landlord's application to

increase his monetary claim to \$1009.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, authority to retain the tenants' security deposit and to recover the filing fee?

Background and Evidence

The undisputed evidence was that this one year, ½ month fixed term tenancy began on June 16, 2012, ended on February 15, 2013, monthly rent was \$900, and the tenants paid a security deposit of \$450 on June 16, 2012.

The parties agreed that there was no move-in condition inspection report or move-out condition inspection report.

The landlord's relevant documentary evidence included a copy of the tenancy agreement, blurry copies of receipts for fuel, meals eaten out, an element said to be for the stove, and a new lock, and an illegible invoice for a licensed, professional pest control company.

As the landlord did not include a detailed calculation for his request for a monetary order as required, I questioned him as to the breakdown. The landlord said that \$450 of the claim was the tenants' security deposit of \$450, as the tenants broke the lease 5 months early, and the balance of \$559 was for fuel and food.

In explanation, the landlord said that the tenants broke the tenancy agreement prior to the end of the fixed term, which meant that the landlord had to incur expenses for fuel and meals while traveling to the rental unit to meet with prospective tenants, as he lived in another town.

The landlord also submitted that he had to replace a burner for the stove and to replace the locks as the tenants did not return the key.

In response, the tenant said that he attempted to return the keys to the rental unit many times by phoning the landlord to arrange a time to return the keys; however, the landlord refused to return the tenants' phone calls or contact the tenants to arrange a time, according to the tenant. The tenant said that he was informed by the landlord to leave the keys in a kitchen drawer; however the tenant said he was uncomfortable doing so as he did not want to leave the house unlocked, on the chance that someone

might enter the premises and then the tenants would be accused of damaging the rental unit.

The tenant said that after many unsuccessful attempts to meet with the landlord to return the keys, he returned the keys via registered mail.

The tenant contended that the rental unit was left in better shape than when they moved in as it was in immaculate condition.

The landlord in response said that his wife's brother lived a block away and would easily retrieve the key.

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, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord 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.

As to the landlord's request for travel expenses, I find that the landlord has chosen to incur costs that cannot be assumed by the tenants. I do not find the tenants to be responsible for the landlord choosing to rent a property in another town from where the landlord resides. The landlord has a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit. Therefore, I find that the landlord may not claim travel or meal costs, as they are costs which are not named by the *Residential Tenancy Act*. I therefore dismiss the landlord's claim for fuel and meal expenses, without leave to reapply.

As to the landlord's claim for a lock change, I find it reasonable that the tenant would not want to leave the key in an unlocked house, rather than meet with the landlord. I also find it reasonable that the landlord could easily requested their family member to meet the tenants to collect the keys to the rental unit or to return the tenants phone calls arranging an exchange of the keys, but yet did not.

I therefore find that the tenants took prudent measures in ensuring the security of the rental unit by not leaving the keys in an unlocked house and I therefore dismiss the landlord's claim for a new lock.

As to compensation for the stove burner, I find that the landlord submitted insufficient evidence that the burner was broken due to the fault of the tenants.

The landlord admitted not conducting move-in or move-out inspections and had no condition inspection reports. Such a report would easily identify such a problem which may be attributable to the tenants causing damage. I therefore dismiss the landlord's claim for a lock change.

As to landlord's request to keep the tenants' security deposit due to breaking the fixed term of the tenancy agreement, I find the landlord did not put forth evidence to show he was entitled to retain this amount. The landlord is under an obligation to minimize his claimed loss and I find the landlord failed to submit evidence that he did so. I therefore dismiss his request to retain the tenants' security deposit of \$450.

Due to the above, I dismiss the landlord's monetary claim of \$1009, without leave to reapply. I likewise dismiss the landlord's request to recover the filing fee.

As I have dismissed the landlord's claim against the tenants' security deposit, I find that the tenants are entitled to a return of their security deposit of \$450. I have not ordered that the landlord pay double the tenants' security deposit due to his failure to comply with sections 24 and 36 regarding inspections and condition inspection reports, as the landlord has claimed for other than damage to the rental unit. I have decided this even though I find the landlord's claim for the security deposit, fuel and meal expenses to lack merit.

I therefore order the landlord to return the tenants' of \$450.

I grant the tenants a final, legally binding monetary order in the amount of \$450, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after it is served upon him, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenants are granted a monetary order in the amount of \$450.

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: June 07, 2013

Residential Tenancy Branch

