



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNDC, FF
For the tenant: MNSD, MNDC

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The tenants applied for a return of their security deposit, doubled, and a monetary order for money owed or compensation for damage or loss.

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

At the outset of the hearing, the landlord acknowledged that she received the tenants' documentary evidence and that she had not submitted any documentary evidence herself.

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

I have reviewed the 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 matter of the tenants' application for dispute resolution, which was filed on June 3, 2013, was discussed at the outset of the hearing. The landlord said that she did receive it and had the opportunity to review it, but did not have sufficient time to file a response. I offered the landlord an opportunity for an adjournment of the hearing in order to file a response, and she declined.

I further considered that the issue of the tenants' security deposit listed in their application would be dealt with in the landlord's application, and that an adjournment was not required.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenants' security deposit and to recover the filing fee?
2. Are the tenants entitled to a return of their security deposit, doubled?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began on September 1, 2011, ended on February 28, 2013, monthly rent was \$900, and the tenants paid a security deposit of \$450 at the beginning of the tenancy.

The parties agreed that there is no move-in or move-out condition inspection report as required of the landlord by the Residential Tenancy Act and that the landlord has returned \$150 to the tenants from their security deposit and retained the balance of \$300.

Landlord's application-

The landlord's monetary claim totals \$300, comprised of a claim for cleaning for \$175 and a claim for cleaning of the kitchen drain plug.

In support of her application the landlord testified that she met with the tenants at the rental unit to obtain the key, and that parties walked around the rental unit. The landlord looked over the premises and the condition seemed fine at the time; however afterwards the landlord noticed that the rental unit had not been cleaned sufficiently, according to the landlord.

In response to my question, the landlord submitted that it was not the landlord's responsibility to clean the rental unit at all before a new tenancy began and that the tenants are responsible to have the rental unit move-in ready for the succeeding tenants. With that standard in mind, the landlord said she cleaned for 7 hours at the costs of \$25 per hour.

As to the request for compensation for the cleaning of a kitchen drain, the landlord testified that during the tenancy, she called a plumber to deal with the clogged drain. The landlord argued that the tenants were responsible for reimbursing her the plumber's costs as the tenants must have been responsible for clogging the drain.

In response, the tenant testified she cleaned the rental unit for at least a month prior to moving out and that it was left very clean. The tenant also submitted that the landlord

did not mention any problems with the rental unit when the parties walked through it on the last day and actually said that the rental unit was in good condition.

As to the issue of the clogged drain, the tenants submitted that they were not responsible due to the drain clogging after just two months into the tenancy. The male tenant submitted that he was with the plumber the day he attended, and when the plumber's snake reached 20', he located a "thick wad of gunk." According to the submissions of the tenant, he asked the plumber if that could have been caused by them after living there for just two months, and the plumber said no.

Tenants' application-

The tenants' claim is for the remainder of their security deposit of \$300, doubled.

In support of her application, the tenant said that they gave the landlord their written forwarding address on March 4, 2013, in a text message.

The tenants submitted that despite several requests, the landlord failed to return all their security deposit, leading to their application for dispute resolution.

In response to my question the tenant said that the parties used text messaging as their primary form of communication.

In response, the landlord confirmed that she received the tenants' forwarding address on March 4, 2013, via text message.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon 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 party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

A key component in establishing a claim for damage or cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections.

In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for cleaning the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

Additionally, under section 37 of the Act, the tenants were required to leave the rental unit reasonably clean, and I find the landlord submitted insufficient evidence that the tenants left the rental unit in a state which required cleaning.

I also find that the landlord failed to submit proof that the tenants caused the clogged drain.

Due to the above, I therefore dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss her request for recovery of the filing fee.

Tenants' application-

Under section 24 (2) and 36 (2) of the Act, when a landlord fails to conduct a condition inspection and to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to file a claim against the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address, according to section 38 of the Act.

In the case before me, the tenant communicated their forwarding address in a text message transmission. I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the evidence.

Although the Act does not recognize text message transmission as an acceptable method of delivery of documents, I order that the delivery of the tenants' forwarding address through the March 4, 2013 text message to the landlord, with the landlord's confirmation, sufficiently served, pursuant to section 71 of the Act.

Therefore the landlord was required to return the *full* amount of the tenants' security deposit to the tenants by March 19, 2013; however the landlord made an unauthorized deduction before returning a portion.

I therefore find the tenants are entitled to a monetary award in the amount of \$750, comprised of their security deposit of \$450, doubled to \$900, less the amount previously returned to the tenants, \$150.

I grant the tenants a final, legally binding monetary order in the amount of \$750, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, 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 subject to recovery from the landlord.

Conclusion

The landlord's application is dismissed.

The tenants have proven a monetary claim of \$750 and have been granted a monetary order in that amount.

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* and is being mailed to both the applicant and the respondent.

Dated: June 12, 2013

Residential Tenancy Branch

