



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application (filed May 7, 2013): MNDC, MNSD, FF

Landlords' application (filed May 14, 2013): MND, MNDC, MNSD, FF

Introduction

This Hearing was convened to consider cross applications. The Tenants seek return of their security deposit; compensation pursuant to the provisions of Section 38(6) of the Act; and to recover the cost of the filing fee from the Landlords.

The Landlords seek a monetary award for damage to the rental unit; compensation for loss of revenue; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenants.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that each party served the other with their Notice of Hearing documents by registered mail. It was also determined that the parties exchanged their documentary evidence. I described the contents of each party's documentary evidence and the other party acknowledged receipt of the documents described.

Issues to be Decided

1. Are the Tenants entitled to a Monetary Order for double the amount of the security deposit?
2. Are the Landlords entitled to a Monetary Order for loss of revenue and damages to the rental unit?
3. May the Landlords apply the security deposit towards partial satisfaction of their monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on February 15, 2012. Monthly rent was \$1,700.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$850.00 on January 15, 2012.

The parties agreed that the Tenants provided the Landlords with their forwarding address in writing on April 2, 2013, by registered mail.

The Landlords gave the Tenants a partial refund of their security deposit, in the amount of \$139.90 on April 2, 2013. The Tenants did not accept the partial refund and returned it to the Landlords on April 2, 2013.

The Tenants stated that there was no Condition Inspection Report completed at the beginning or the end of the tenancy, and that the male Tenant's signature on the copy of the move in Condition Inspection Report that the Landlord provided in evidence was fraudulently added to the Report by the Landlord. The Tenants submitted that it is identical to the male Tenant's signature on the tenancy agreement and that it contains parts of the female Tenant's signature, which was directly below the male Tenant's on the tenancy agreement.

The Landlords denied that they altered the move in Condition Inspection Report. They stated that there was no move out Condition Inspection completed because the Tenants were not ready to move out on February 28, 2013.

The Landlords stated that the Tenants gave verbal notice to end the tenancy on February 1, 2013, effective February 28, 2013, but did not move out of the rental unit until March 2, 2013. The Landlords seek a monetary award in the equivalent of one month's rent for failure to provide due notice to end the tenancy.

The Landlords stated that they advertised the rental unit for rent on February 15, 2013, and re-rented it for March 1, 2013. Later in the Hearing, the Landlords stated that the new occupants moved into the rental unit on March 15, 2013. The Landlords did not provide a copy of the tenancy agreement with the new occupants in evidence.

The Tenants agreed that they had not given written notice to end the tenancy, but stated that the Landlords told them they did not require written notice. The Tenants testified that they were completely moved out of the rental unit on March 1, 2013, which is the date that the new occupants moved in. The Tenants stated that they met the new occupants while they were moving in on March 1, 2013, and that they gave the new occupants some outdoor furniture.

The Landlords testified that the Tenants damaged the stove in the rental unit, took the remote control for the garage door and damaged a drawer. The Landlords stated that the Tenants did not clean the carpets at the end of the tenancy. The Landlords seek a monetary award in the amount of \$380.80 for the cost to fix the stove; \$35.00 for the cost to replace the remote control; and \$109.76 for the cost of repairing the drawer. It is important to note that the above figures differ from the amounts given on the Landlords' Monetary Order Work Sheet. During the Hearing, I mentioned this to the female Landlord and she stated that she did not realize that the work sheet was intended to support her monetary claim.

The Tenants stated that the stove door didn't close properly since the beginning of the tenancy and that it was a very heavy door. They stated that they advised the Landlords about the stove door at the beginning of the tenancy and provided a copy of a text message in evidence. The Tenants denied taking the remote control for the garage, but agreed that they were responsible for the broken drawer.

Analysis

Regarding the Landlords' application

It is important to note that during the course of the Hearing on July 31, 2013, I ordered the Landlords to provide me with the original move in Condition Inspection Report within one week (by August 7, 2013), which they indicated that they would do. I cautioned the Landlords that failure to provide the original Report would have a negative impact on their credibility. As of today (August 8, 2013), they still have not provided the original move in Condition Inspection Report.

In the absence of the original move in Condition Inspection Report, I carefully studied the copy of the Report and the copy of the tenancy agreement. I placed the page of the tenancy agreement that contained the male Tenant's signature against a back-lit window and put the Report over the page. The signatures lined up perfectly. In addition, a portion of the female Tenant's signature appears to be incorporated into the male Tenant's signature on the Report. I find it most probable that a person would not sign two documents with exactly the same signature. Therefore, I find it probable that the male Tenant's signature on the Report is not an original signature and that it was lifted from the tenancy agreement.

I have carefully considered the testimony of both of the parties in an effort to establish credibility in relation to the disputed facts. I favour the evidence of the Tenants over the Landlords' for the following reasons:

- I have found that the Landlords submitted evidence which is not credible (the Report) in an effort to substantiate their monetary claims.
- There were other inconsistencies in the Landlords' evidence. For example, the Landlords stated that the new occupants moved into the rental unit on March 15, 2013, after testifying that the new occupants moved into the rental unit on March 2, 2013.

Therefore, I find that the Tenants moved out of the rental unit on February 28, 2013, and that the new occupants moved into the rental unit on March 1, 2013. Even if I accepted that the new occupants did not move into the rental unit until March 15, 2013, which I do not accept, then the Landlords would only be entitled to loss of revenue from March 1 – 14, 2013. In any event, I find that the Landlords did not suffer any loss of income and therefore their claim for \$1,700.00 is dismissed without leave to reapply.

I further find that there was no move in Condition Inspection Report completed that complies with the provisions of the regulations. Absent a preponderance of evidence to the contrary, a Condition Inspection Report completed in accordance with the regulations is evidence of the state of repair and condition of the rental unit at the date of the inspection. I prefer the Tenants' evidence with respect to the stove and the remote control. Therefore, this portion of the Landlords' application is also dismissed without leave to reapply.

The Tenants agreed that they damaged the drawer and therefore, I allow this portion of the Landlords' claim in the amount of **\$109.76**.

The Tenants testified that they agreed to pay for the damaged drawer and therefore I find that the Landlords' application was not necessary in order for the Tenants to pay the cost of repairing the drawer. The remainder of the Landlords' application has been dismissed and therefore I find that the Landlords are not entitled to recover the cost of the filing fee from the Tenants.

Regarding the Tenants' application

The security deposit is held in a form of trust by the Landlords for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

In this case, the Landlords received the Tenants' forwarding address on April 2, 2013. The Landlords did not return the security deposit within 15 days, or file an application for dispute resolution against the security deposit until May 14, 2013.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security deposit (\$850.00 x 2 = **\$1,700.00**).

The Tenants have been successful in their application and I find that they are entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Set off Landlords' award against Tenants' award

I hereby set off the Landlords' award against the Tenants' award and provide the Tenants with a Monetary Order, calculated as follows:

Security deposit and compensation under Section 38(6)	\$1,700.00
Recovery of filing fee	\$50.00
Less Landlords' monetary award	<u>-\$109.76</u>
TOTAL	\$1,640.24

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,640.24**, representing the amount awarded to the Tenants after setting off the Landlords' monetary award. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

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: August 08, 2013

Residential Tenancy Branch

