



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed June 10, 2013: MNSD; MNDC; FF

Landlord's application filed July 31, 2013: MNSD; MNDC; MNR; MND; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenants seek a monetary award in the equivalent of double the amount of the security deposit; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a monetary award for compensation for damage or loss under the Act, regulation or tenancy agreement; a monetary award for unpaid rent and damages; to retain the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Tenant HS testified that she served the Landlord with the Tenants' Notice of Hearing documents by registered mail. She testified that the Landlord gave her the wrong mailing address, but she was able to find it out. The Landlord acknowledged that she received the Tenants' Notice of Hearing documents. The Tenants did not provide any documentary evidence to the Residential Tenancy Branch or to the Landlord.

The Landlord testified that she served the Tenants with her Notice of Hearing documents by registered mail, sent August 2, 2013. The Landlord provided the registered mail tracking receipt and tracking numbers. The Landlord stated that she did not serve the Tenant with copies of her documentary evidence and therefore they were not considered by me.

Issues to be Decided

- Are the Tenants entitled to a monetary award in the equivalent of double the security deposit pursuant to the provisions of Section 38 of the Act?

- Are the Tenants entitled to compensation in the amount of \$150.00 for overpayment of rent?
- Is the Landlord entitled to a monetary award for damage to the rental unit, late fees, loss of revenue from May 1 to 5, 2013, and the cost of shampooing the carpets at the end of the tenancy?

Background and Evidence

The Tenants moved into the rental unit on February 25, 2010. At the end of the tenancy monthly rent was \$1,250.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$575.00 on February 20, 2010.

A Condition Inspection Report was completed at the beginning of the tenancy, but the Landlord (YY) stated that she did not complete a condition inspection at the end of the tenancy because she was too busy.

The Tenant (HT) testified that the tenancy ended on April 30, 2013. YY disputed this and stated that the tenancy ended on May 2, 2013, and that she was not able to re-rent the rental unit until May 6, 2013. YY stated that the new occupants paid pro-rated rent for May, 2013. YY seeks a monetary award for loss of revenue from May 1, 2013, to May 5, 2013, because the Tenants did not provide written notice to end the tenancy.

HT stated that she was not able to give YY due notice because she was in China and did not give the Tenants a mailing address where written notice could be sent. YY stated that the mail in China is not reliable and therefore the parties routinely communicated by e-mail. HT stated that she gave notice to end the tenancy in March, 2013, by e-mail because it was the only way she could.

HT testified that she gave YY her forwarding address by e-mail at the end of the tenancy. YY said that she did not get it. HT stated that she also gave her forwarding address to the building manager at the rental property and to YY's new tenant. HT stated that she has never been given a mailing address for the Landlord, not in Canada or in China. HT testified that she also called YY on the phone, but she would not answer. YY stated that she didn't answer HT's call because "the Tenants talk too much". YY testified that she did not get the Tenants' forwarding address.

HT seeks to recover an overpayment of rent in the amount of \$150.00. YY denied that HT overpaid rent. YY stated that the Tenants owe her \$650.00 for rent owed, for which YY said there is a written agreement. HT denied owing any rent.

YY stated that she came back to Canada on April 11 or 13, 2013. She stated that the Tenants moved out on May 1, 2013, and that they were still cleaning so they agreed to meet again on May 2, 2013. YY stated that the Tenants damaged some drawers in the kitchen and the garburetor. She testified that the Tenants did not shampoo the carpets at the end of the tenancy. YY stated that the Tenants were often late paying rent and therefore she seeks late fees.

HT denied causing damage to the drawers or the garburetor. She stated that the garburetor was not working while YY was in China so the Tenants had it repaired. HT agreed that the Tenants did not shampoo the carpets at the end of the tenancy.

The Tenants seek a monetary award calculated as follows:

Double the amount of the security deposit pursuant to Section 38(6) of the Act	\$1,150.00
Return of overpayment of rent	\$150.00
Recovery of the filing fee	<u>\$50.00</u>
TOTAL	\$1,350.00

The Landlord seeks a monetary award calculated as follows:

Unpaid rent	\$650.00
Loss of revenue for May, 2013	\$200.00
Late fees (\$25.00 x 12)	\$300.00
Damage to drawers	\$50.00
Damage to garburetor	\$50.00
Cost of shampooing the carpets	\$150.00
Recovery of filing fee	<u>\$50.00</u>
TOTAL	\$1,450.00

Analysis

Each party has the responsibility of proving their claims on the civil standard, the balance of probabilities.

Regarding the Tenants' Application:

I find that the Tenants did not provide sufficient evidence to support their claim of overpayment of rent in the amount of \$150.00. This portion of their application is dismissed.

The security deposit is held in a form of trust by the Landlord 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 written 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.

Section 38(6) of the Act provides that a landlord cannot claim against the security deposit and must pay double the amount to the tenant if the landlord does not comply with Section 38(1) of the Act.

Landlords are required by the Act to provide their tenants with an address for service of documents and also a phone number for an agent in the event of an emergency or if the landlord is going to be away. YY cannot expect the Tenants to provide written notification to end the tenancy or to provide written notification of their forwarding address if she didn't provide them with an address for service of such documents. However, in this case, HT and YY met on May 2, 2013. The Tenants had an opportunity to give YY their forwarding address in writing on May 2, 2013, but didn't.

Therefore, I decline to award the Tenants double the amount of the security deposit. However, Section 36 of the Act provides that a landlord's right to claim against the security deposit for damages is extinguished if the landlord does not complete a Condition Inspection Report at the end of the tenancy and provide the tenant with a copy.

I Order that the Landlord return the security deposit to the Tenants, in the amount of **\$575.00**.

Regarding the Landlord's Application:

Although the Landlord extinguished her right to claim against the security deposit, she still retains the right under Section 67 of the Act to make an application for compensation for damage or loss.

A Condition Inspection Report is evidence of the condition and repair of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. The onus is on the Landlord to provide sufficient evidence to prove that the Tenants caused the damages for which the Landlord seeks compensation. I find that the Landlord did not provide sufficient

evidence to prove her claim for the cost of repairing the garburetor or the drawers. The Tenant agreed that the carpets were not shampooed at the end of the tenancy. Therefore I allow the Landlord's claim in the amount of **\$150.00** for the cost of shampooing the carpets.

I dismiss the Landlord's application for unpaid rent and late fees. The Landlord did not provide a copy of the written agreement that she testified she had with respect to the unpaid rent. The Landlord did not provide sufficient evidence to support her claim for late fees (for example, documentary proof for the months that she alleges the Tenants were late).

With respect to the Landlord's claim for loss of revenue, I find that the Landlord provided insufficient documentary evidence to prove her loss in the amount of \$200.00. This portion of her application is also dismissed.

Set-off of Awards:

I order that each party each bear the cost of their own filing fees.

I hereby set off the Landlord's monetary award against the Tenants' monetary award and provide the Tenants with a Monetary Order in the amount of **\$425.00** for service upon the Landlord.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$425.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: September 23, 2013

Residential Tenancy Branch

