



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed May 15, 2013): MND; MNR; MNSD; FF

Tenants' application (filed May 22, 2013): MNDC; MNSD

Introduction

This Hearing was convened to consider the cross applications. The Landlord is seeking a monetary award for damages and unpaid rent; to apply the security deposit and pet damage deposit against his monetary award; and to recover the cost of the filing fee from the Tenants.

The Tenants seek return of the pet damage deposit and security deposit.

Preliminary Matters

On August 8, 2013, 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.

On August 8, 2013, it was determined that the parties exchanged their respective Notice of Hearing documents.

An Interim Decision was issued on August 12, 2013, which should be read in conjunction with this Decision

Issues to be Decided

- Are the Tenants entitled to a monetary award in the equivalent of double the security and pet damage deposit and the cost of replacing garbage and recycling cans?
- Is the Landlord entitled to a monetary award for unpaid utilities and the cost of cleaning up and disposing of the Tenants' garbage? May the Landlord deduct

the security and pet damage deposit towards partial payment of his monetary award?

Background and Evidence

This tenancy began on February 1, 2013. Monthly rent was \$900.00, due on the first day of each month. Monthly rent did not include utilities.

The Tenant gave the following testimony:

The Tenant testified that the tenancy ended on April 30, 2013, and that he gave the Landlord his forwarding address in writing on April 30, 2013. He testified that he did not agree that the Landlord could keep any of the security deposit or pet damage deposit.

The Tenant testified that the Landlord took the Tenant's garbage cans and recycle cans. The Tenant seeks to recover the cost of the cans from the Landlord in the amount of \$160.00.

The Landlord gave the following testimony:

The Landlord testified that the Tenant left garbage at the rental unit at the end of the tenancy. The Landlord stated that he agreed that the Tenant could come back on May 1, 2013, to pick up the garbage. He stated that he waited several days and when the Tenant didn't return, the Landlord took the garbage to the dump.

The Landlord stated that the Tenant could come and pick up his garbage cans and recycle cans at the rental property. The parties agreed that the Tenant would pick them up at noon, September 26, 2013, and that the Landlord would leave them at the end of the drive.

The rental unit is the lower suite of the rental property. The upper suite is also tenanted. The Landlord stated that the Tenant owes money for his share of utilities. He stated that he and the Tenant had an agreement that the Tenant would pay 50% of utilities. The Landlord stated that the Tenant has not paid his share.

The Landlord testified that he received the Tenant's forwarding address on May 4 or 5, 2013, and that it was left on his door step.

The Tenant provided the following response:

The Tenant stated that he initially agreed that he would pay 50% of utilities, but that was before he realized that there were 5 people in the upper suite. He stated that those 5 people moved out and then 3 to 4 people moved in. The Tenant suggested that he

should only have to pay 30% of the utilities. He stated that he never spoke to the second group of occupants and therefore they did not come to an agreement with respect to sharing utility costs.

Analysis

The Tenants submitted that the total of the deposits were \$800.00. On August 8, 2013, the male Tenant testified that he still had the original receipt for the deposits. Although he was provided two opportunities to submit the original receipt to me, he did not do so. The Tenants provided a photocopy of a receipt only, which indicates that they paid a total of \$800.00 for “damage deposit”.

The Landlord provided an original copy of a receipt, which indicates that the Tenants paid a total of \$600.00. The Landlord’s copy is the yellow duplicate copy of an original receipt. The Landlord’s original copy appears to be identical to the Tenants’ photocopy, with the exception of the amount on the receipt.

I find it more probable that the Landlord’s original copy of the receipt is a true copy and therefore, I find that the Tenants paid a security deposit and pet damage deposit in the total amount of \$600.00.

Regarding the Tenant’s Application:

Because of my finding with respect to the amount of deposits paid, where the parties disagree on dates or numbers, I find that I prefer the Landlord’s testimony over the Tenants’. I find that the Landlord received the Tenants’ forwarding address in writing on May 4, 2013.

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.
(emphasis added)

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.

The tenancy ended on April 30, 2013, and the Landlord received the address on May 4, 2013. The Landlord filed his application against the deposits on May 15, 2013, which is within the time limit allowed.

Therefore, I find that the Tenants are not entitled to a monetary order for double the security deposit, pursuant to the provisions of Section 38(6) of the Act.

The Landlord testified that the Tenants left the garbage and recycle cans at the rental property. I find that the Tenants did not provide sufficient evidence that the Landlord stole their garbage and recycle cans and therefore they are not entitled to their monetary claim for loss in the amount of \$160.00. In any event, the Landlord has indicated that he will make them available for the Tenants to pick up.

Regarding the Landlords' Application:

The parties agreed that the Tenants agreed to pay 50% of the utilities at the beginning of the tenancy. The Tenants agreed that he had no subsequent agreement to pay 30%. The Tenants have not paid any percentage of the outstanding utilities. I find that the tenancy agreement required that the Tenants pay 50% of utilities. The Landlord provided copies of the utility bills for the term of the tenancy. Based on those bills, I find that the Tenants owe the following amounts:

Utilities for January 11 – March 12, 2013 = \$685.98	
\$685.98/61 days = \$11.2455 per day	
February 1 – March 12, 2013 = 40 days	
\$11.2455 x 40 days = \$449.82	
\$449.82 x 50% =	\$224.91
Utilities for March 13 – May 10, 2013 = \$456.88	
\$456.88/59 days = \$7.7437 per day	
March 13 – April 30, 2013 = 49 days	
\$7.7437 x 49 days = \$379.44	
\$379.44 x 50% =	<u>\$189.72</u>
TOTAL	\$414.63

The Tenant did not agree that he had left garbage at the rental property. The Landlord did not provide a copy of the Condition Inspection Report and therefore, I find that he provided insufficient evidence to prove the remainder of his claim.

The Landlord's application had merit and therefore I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Tenants.

The Landlord has established a total monetary award of **\$464.63**. Pursuant to the provisions of Section 72 of the Act, the Landlord may keep \$454.63 of the deposits. I order that he return the balance in the amount of **\$135.37** to the Tenants.

Conclusion

The Tenants' application is dismissed in its entirety.

I hereby provide the Tenants with a Monetary Order in the amount of **\$135.37**, **representing return of the balance of the security deposit and pet damage deposit after deduction of the Landlord's monetary award**, 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: October 08, 2013

Residential Tenancy Branch

