



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MNR MNSD FF

For the tenants: MNSD FF

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 landlords applied for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the security deposit, and to recover the filing fee.

The tenants applied for the return of double their security deposit under the *Act*, and to recover their filing fee.

Tenant DO, landlord JC, and landlord agent FR, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The landlord confirmed that she received evidence from the tenants and had the opportunity to review the tenants’ evidence prior to the hearing. The landlord did not serve evidence, other than a registered mail receipt which was moot as both parties attended the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on April 1, 2011 and reverted to a month to month tenancy after March 31, 2013. Monthly rent in the amount of \$1,875.00 was due on the first day of each month. The tenants paid a security deposit of \$937.50 at the start of the tenancy which the landlords continue to hold.

The parties agree that the tenants vacated the rental unit on June 30, 2013. The landlords are seeking a monetary order for \$1,300.00 comprised of unpaid water bills.

The landlord presented witness FR, who could not confirm whether landlord SC provided the water bills in evidence when she attended with landlord SC when he filed their application for dispute resolution. The landlords' application did not include any water bills which the landlord was advised of during the hearing. The landlord then requested permission to submit water bills after the hearing which was denied as the hearing had already commenced and the deadline to submit evidence had already lapsed. The landlord confirmed that she did not provide the tenant with the \$1,300.00 in water bills prior to the hearing. The tenant confirmed that she has not seen the \$1,300.00 in water bills as described by the landlord.

Tenant DO stated that the tenants provided their written forwarding address to the landlords on June 30, 2013 in writing, which the landlord agreed to during the hearing. The landlord filed for arbitration filing to claim towards the security deposit on July 12, 2013. The tenants have applied for the return of double their security deposit under the *Act*.

The tenants submitted in evidence two pages of a typed explanation for their dispute, registered mail receipts, tenancy agreement, fact sheets, copies of texts, notice to end tenancy, written forwarding address and other documents.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and their claim fails.

Landlords' claim for unpaid water bills – The landlord is seeking \$1,300.00 in compensation for unpaid water bills, yet failed to submit a copy of those water bills in evidence. The landlord confirmed that she did not serve the water bills on the tenant and therefore, **I find** the landlords have failed to prove the value of their loss, which is described in #3 above. At the very least, the landlords should have served the tenants with copies of the water bills and ensured the water bills were included in their evidence in support of their application, which they failed to do. Therefore, **I dismiss** the landlords' claim in full due to insufficient evidence, **without leave to reapply**.

Tenants' application for return of double their security deposit - The landlords continue to hold the tenants' security deposit of \$937.50 which has accrued \$0.00 in interest since the start of the tenancy. Section 38 of the *Act* states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.
- (7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.
- (8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

[emphasis added]

The landlords applied for dispute resolution claiming towards the tenants' security deposit on July 12, 2013, which is within fifteen days of June 30, 2013, the date the parties agree that tenants provided their written forwarding address to the landlords. Based on the above, **I find** the landlords did not breach section 38 of the *Act* as they claimed towards the security deposit in accordance with section 38 of the *Act*. Based on the above, **I find** the tenants are **not entitled** to the return of double their security deposit, however, are entitled to the return of their full security deposit of \$937.50 as the landlords' claim has been dismissed.

As the landlords' application did not have merit, **I do not grant** the landlords the recovery of their filing fee.

As the tenants' application had merit, **I grant** the tenants the recovery of their filing fee in the amount of **\$50.00**.

I find the tenants have established a total monetary claim in the amount of **\$987.50** comprised of \$937.50 for the return of the tenants' full security deposit and \$50.00 for the filing fee. Based on the above, **I grant** the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$987.50**. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I ORDER the landlords to immediately return the tenants' full security deposit of \$937.50 plus \$50.00 for recovery of the tenants' filing fee for a total of **\$987.50**.

The tenants may enforce the monetary order in the Provincial Court of British Columbia (Small Claims) should the landlords fail to comply with my Order.

Conclusion

The landlord's claim has been dismissed in full, without leave to reapply.

The landlords have been ordered to immediately return the tenants full security deposit and filing fee in the total amount of \$987.50. The tenants are granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$987.50. This order must be served on the landlords and may be filed in the Provincial Court (Small Claims) should the landlords fail to comply with my Order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2013

Residential Tenancy Branch

