



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNSD, FF
MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term of tenancy was from October 1, 2012 to September 30, 2013. Monthly rent of \$1,400.00 was due and payable in advance on the first day of each month, and a security deposit of \$700.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

A move-out condition inspection report was completed with the participation of both parties on September 30, 2013, and the tenant provided a forwarding address on the report. It is understood that the address provided is the tenant's workplace. The landlord testified that a tenancy agreement was thereafter entered into with new tenants effective October 1, 2013.

The tenant filed her original application for dispute resolution on October 9, 2013, and subsequently amended the application on November 1, 2013. The landlords filed their application for dispute resolution on November 6, 2013.

In their documentary submission, the landlords note that while the tenant provided a forwarding address on the move-out condition inspection report on September 30, 2013,

a different address is shown on the tenant's original and amended application for dispute resolution. It is understood that the address shown on both the tenant's original and amended applications is her residential address.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

At the outset, the attention of the parties is drawn to section 37 of the Act which addresses **Leaving the rental unit at the end of a tenancy**, in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Based on the documentary evidence and testimony, the various aspects of the respective claims and my findings around each are set out below.

LANDLORDS

\$250.00 (\$150.00 for material & \$150.00 for labour): *replacement of "scratched up" kitchen island countertop*

While the move-out condition inspection report notes "red countertop scratched," the tenant takes the position that the marked surface reflects reasonable wear and tear. The landlord testified that as the countertop has not been replaced, no replacement costs have been incurred. Additionally, it is understood that the countertop was not new at the time when the tenancy began. Following from all the foregoing, I find on a balance of probabilities that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim, and it is therefore dismissed.

\$45.92 [\$5.92 for supplies & \$40.00 for labour (2 hours x \$20.00 per hour)]: *oven cleaning*

The move-out condition inspection report notes "the oven dirty with burned food" and in

support of this aspect of the application the landlords have submitted photographs of the oven. In the result, I find that the landlords have established a claim of **\$32.96**:

\$2.96: half the amount claimed for supplies, in view of the absence of a receipt
\$30.00: labour calculated on the basis of 2 hours x \$15.00 per hour

\$240.00 (\$40.00 for material & \$200.00 for labour): *repair to indentations on laminate flooring*

There is no identification of this damage on the move-out condition inspection report, and the landlord testified that the damage was discovered after the move-out condition inspection report had been completed. Further, the landlord testified that as no repairs have been undertaken, no cost has been incurred. In the result, I find that this aspect of the application must be dismissed.

\$40.00 (2 hours x \$20.00 per hour): *cleaning of base boards and bathroom tub*

In the absence of any identification of a requirement for this cleaning on the move-out condition inspection report, I find that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim, and it is therefore dismissed.

\$150.00 (\$50.00 for material & \$100.00 for labour): *repairs to wood floor within bathroom cabinet*

The move-out condition inspection report notes that “the wood floor is cracked,” and evidence in support of this aspect of the claim is otherwise mainly limited to photographs. There are no receipts in evidence and, while the landlord testified that no structural repairs have been undertaken, the damaged area has been covered over. In the result, I find that the landlords have established entitlement limited to **\$50.00**.

\$50.00: *filing fee*

As the landlords have achieved a measure of success with their application, I find that they have established entitlement to recovery of the full filing fee.

Entitlement: \$132.96 (\$32.96 + \$50.00 + \$50.00)

TENANT

\$1,400.00 (2 x \$700.00): *return of double the amount of the original security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the

landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

I find that the tenant provided a forwarding address in writing on September 30, 2013, which was also the last day of tenancy, by way of the move-out condition inspection report. The landlords corresponded with the tenant in regard to why they wished to retain the full security deposit and obtain additional payment from the tenant by letter dated October 7, 2013. The landlords claim that this letter was mailed on October 10, 2013 to the tenant at the address provided on the move-out condition inspection report.

Notwithstanding that the tenant's original and amended applications show a different address from the one provided on the move-out condition inspection report, I find that it was not until November 6, 2013 when the landlords filed their own application for dispute resolution. As this is more than 15 days after September 30, 2013 when the tenant initially provided a forwarding address in writing, I find that the tenant has established entitlement to return of double the amount of the original security deposit.

\$50.00: *filing fee*

As the tenant has succeeded with her application, I find that she has established entitlement to recovery of the full filing fee.

Entitlement: \$1,450.00 (\$1,400.00 + \$50.00)

Offsetting the respective entitlements, I find that the tenants have established a net claim of **\$1,317.04** (\$1,450.00 - \$132.96)

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,317.04**. Should it be necessary, this order may be served on the landlords, filed in the 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: January 09, 2014

Residential Tenancy Branch

