



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF
 MNDC MNSD FF

Preliminary Issues

The Tenants submitted evidence that argued that the male Tenant, L.G., vacated the property back in June 2013 and he was no longer a tenant. The Landlord's evidence argued that although he received information that L.G. had moved out in June 2013, he also received information that he and his dog moved back into the rental unit approximately two months later. The Landlord noted that the tenancy agreement was never amended to remove L.G. as a tenant, which supports his application being filed against both tenants.

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. That means the landlord can recover the full amount owed from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

After careful consideration of the above and the documentary evidence before me, I agree with the Landlord's submission that the Tenants remained jointly and severally liable for this tenancy because the written tenancy agreement was never changed and initialled by all parties. Accordingly, the style of cause has been amended and lists both Tenants, pursuant to section 64(3)(c) of the *Act*.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking a Monetary Order for damage to the unit, site or property; to keep the security and pet deposits; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed to obtain a Monetary Order for: money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for the return of their security and pet deposits; and to recover the cost of their filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?
2. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The parties confirmed they entered into a fixed term tenancy agreement that began on April 1, 2013 and was set to switch to a month to month tenancy after March 31, 2014. Rent was payable on the first of each month in the amount of \$750.00 and on March 20, 2013 the Tenants paid \$375.00 as the security deposit and \$375.00 as the pet deposit. The parties attended a move-in inspection and completed the condition inspection report form on March 31, 2013.

The Landlord testified that he received a voice message on September 22, 2013 that the Tenants would be vacating the property by October 5, 2013. He informed the Tenants that he needed written notice to end the tenancy and that there would be fees incurred to end the tenancy. He arranged to show the unit on September 28, 2013, and when he attended L.G. handed him a letter written by C.E. that states they were ending their tenancy as of October 5, 2013. He had scheduled a move out inspection for October 3, 2013 at 10:00 a.m. He received the Tenant's forwarding address on October 3, 2013, by text message but did not receive it in writing until he received their Application for Dispute Resolution which was received shortly after they filed on October 17, 2013.

The Landlord confirmed that he deposited the Tenants' October 1, 2013, post dated rent cheque on October 3, 2013, as payment for October rent, prior to conducting the move-out walk through with L.G. He believes he is entitled to October rent because he was

not provided a full month's notice for ending the tenancy and because he was not able to re-rent the unit until November 1, 2013.

The Landlord stated that his claim is comprised of \$300.00 for liquidated damages provided for in the tenancy agreement and which are to cover the cost of re-renting the unit, \$5.00 for a replacement key that was lost by the Tenants; \$20.00 to clean the bathroom; \$5.00 to replace the bathroom light cover; and \$20.00 to replace the shower head.

The Tenants initially stated they were disputing all items claimed by the Landlord and later changed their mind and stated they were not disputing the \$300.00 for liquidated damages; \$5.00 for the replacement key; and \$20.00 to clean the bathroom. They were however, disputing the claim for \$5.00 for the bathroom light cover and disputed the \$20.00 for the shower head.

The Tenants argued that they were never given the opportunity to walk through the unit at move out. They said that when they arrived at the unit on October 3, 2013, the Landlord came out of the unit, asked for the keys, locked the doors and said he had to leave to go to another appointment. They argued that they gave written notice to end the tenancy and returned the keys on October 3, 2013; therefore, the Landlord was not entitled to cash their October rent cheque. They said the light cover was cracked at the time they moved into the unit and that the shower head had signs of previous damage and tape before it broke in mid-September. They left the shower head on the table for the Landlord along with their notice to end their tenancy. They had replaced the broken shower head themselves and took the new one with them when they moved out because they had purchased it.

In closing, the Landlord said both Tenants were at the rental on October 3, 2013, and he did the move out walk through with L.G. He does not know where C.E. was during the time he did the walk through. He also confirmed that the broken shower nozzle was on the table when he attended on September 28, 2013, but that was the first time he was made aware that it had broken.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

Upon review of the evidence before me, I find that both parties attended the unit on October 3, 2013 with the intent to conduct a move out inspection in accordance with section 35 of the Act, but that meeting became confrontational. The Landlord complied with the Act by completing the move out inspection report form and by sending a copy to the Tenants' with his Application for Dispute resolution, within 15 days of receiving the Tenants' Application listing their forwarding address in writing.

Landlord's Application

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged **except for reasonable wear and tear** [emphasis added].

Based on the aforementioned I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

The Tenants did not dispute the Landlord's claim for \$300.00 for liquidated damages; \$5.00 for the replacement key; and \$20.00 to clean the bathroom. Accordingly, I award the Landlord a monetary claim for undisputed items in the amount of **\$325.00** (\$300.00 + \$5.00 + \$20.00).

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the absence of proof to the contrary, and based on the above, I find that the evidence supports that the bathroom light cover was broken during the course of this tenancy. Accordingly, I award the Landlord's claim for the light cover in the amount of **\$5.00**.

Residential Tenancy Policy Guideline # 1 provides that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and

sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Upon review of the Landlord's claim for the broken shower nozzle, I find there to be insufficient evidence to prove the shower nozzle was broken as the result of the Tenants' negligence and not by normal wear and tear. Accordingly, I dismiss the Landlord's claim for a replacement shower nozzle, without leave to reapply.

The Landlord has primarily been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

Tenant's Claim

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The undisputed evidence in this case is that the parties entered into a fixed term tenancy agreement that required the payment of rent on or before the first of each month, for a fixed term tenancy that was set to end on March 31, 2014.

Based on the above, the Tenants could not end this tenancy in accordance with section 45 of the Act, prior to March 31, 2014, the end date of the fixed term. Accordingly, I find the Tenants breached Section 45(2) of the Act, by ending the Tenancy October 3, 2013.

Section 26 of the Act stipulates that a Tenant must pay rent when it is due in accordance with the tenancy agreement.

The evidence supports the Tenants remained in possession of the unit until October 3, 2013, and the unit was not re-rented until November 1, 2013. Therefore, I find the Landlord was entitled to the October 1, 2013 rent payment for use and occupancy and for loss of rent. Accordingly, I dismiss the Tenants' claim for the return of their October 2013 rent payment, without leave to reapply.

Section 38(7) of the Act stipulates a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

I find the Landlord had liberty to file his claim against the security deposit for damages. However, there is no evidence before me that would indicate the Landlord's claim pertains to damage caused by a pet. Therefore, the Landlord did not have rights to file a claim to retain the pet deposit. Accordingly, the Landlord was required to return the

Tenants' pet deposit in full within 15 days after the tenancy ended or when he received the Tenants' forwarding address in writing, pursuant to Section 38(1) of the Act.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the Act and that the Landlord is now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the pet deposit and the landlord must pay the tenant double the pet deposit.

Accordingly, I award the Tenants' the return of double their pet deposit plus interest in the amount of **\$750.00** (2 x \$375.00 + \$0.00).

The Tenants have been partially successful with their application; therefore I award recovery of their **\$50.00** filing fee

Offset Monetary Awards – I find that these claims meet the criteria under section 72(2)(b) of the Act to be offset against each other as follows:

Tenants' monetary award (\$750.00 + \$50.00)	\$800.00
LESS: Landlord's monetary award (\$325.00 + \$5.00 + \$50.00)	<u>- 380.00</u>
Offset amount due to the Tenants	<u>\$420.00</u>

Conclusion

The Tenants have been awarded a Monetary Order in the amount of **\$420.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province 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: January 20, 2014

Residential Tenancy Branch

