



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNSD, MND, MNR, MNDC, FF
For the tenant: MNSD

Introduction

This was the reconvened hearing dealing with the parties' respective applications for dispute resolution under the Residential Tenancy Act (the "Act").

The landlords applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss, unpaid rent and alleged damage to the rental unit, and to recover the filing fee.

The tenants applied for a monetary order for a return of their security deposit and pet damage deposit.

This hearing began on January 23, 2014, and dealt only with a discussion of the tenants' application, as I was unaware on that date that the tenants' application was scheduled to be heard along with the landlords' application. The tenants' application was not before me at that time, did not appear to be scheduled as a cross application, and the hearing was therefore adjourned in order to be able to obtain the tenants' application.

Tenant KV attended the first hearing, but did not attend the second hearing.

The hearing was adjourned until March 19, 2014, but due to an illness, the hearing was again rescheduled, to the present date.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the parties' respective applications.

At this hearing, the above two listed parties attended, the hearing process was explained and they were given the opportunity to ask questions about the hearing process.

Both parties acknowledged that they had received the other's applications and documentary evidence. Landlord RL stated that she understood landlord JK did receive the tenants' application and evidence.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's applications, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Are the landlords entitled to retain the tenants' security deposit and pet damage deposit, further monetary compensation and to recover the filing fee?
2. Are the tenants entitled to a return of their security deposit and pet damage deposit?

Background and Evidence

A written tenancy agreement was entered into evidence, showing that this month to month tenancy began on August 1, 2011, monthly rent was \$1500, and the tenants paid a security deposit and a pet damage deposit of \$750 each. The two deposits are being held by the landlords.

The parties agreed that the tenancy ended on September 30, 2013, when the tenants vacated the rental unit.

Landlords' application-

The landlords' monetary claim is \$3000, which is comprised of loss of rent revenue of \$1500 for October 2013, and \$1500 for the cost of repainting the rental unit.

The landlords' relevant documentary evidence included a written timeline of events, a statement from landlord JK, estimates from painting companies, a condition inspection report, and photographs of the rental unit.

In support of their application, the landlord submitted that the tenants failed to provide written or any notice of their intent to vacate the rental unit by September 30, 2013, that she did not learn that the tenants had vacated until that day, September 30, 2013, and that due to the insufficient notice provided by the tenants, the landlord sustained a loss of revenue for October 2013.

As to the landlords' claim for monetary compensation for damage to the paint in the rental unit, the landlord submitted that the tenants painted the rental unit without permission, apparently attempting to cover up the damage made by the tenants' children. The landlord submitted that the paint was not the same colour and would have to be repainted.

In response to my question, the landlord stated that the rental unit had not been repainted as yet as the house was for sale and that the amount claimed was from quotes received from painting companies.

In response, the tenant stated that she has only lived in Canada 6 years, had rented three properties in that time, and was unaware that she was required to provide written notice.

The tenant also submitted that in 2012, she was informed by landlord JK that landlord RL was moving and that the tenants were to deal only with JK. The tenant stated that from that time on, all her communication was with JK, and as such, she communicated to JK on August 16, 2013, that the tenants would be vacating the rental unit by September 30, 2013.

The tenant submitted that the home was listed for sale on August 16, 2013, and that many realtors came by the rental unit on an almost daily basis, without notice, to show the home.

The tenant submitted that she was never given any contact information for RL.

As to the issue of the painting, the tenant submitted that the painting was of good quality and that she took very good care home while living there.

I must note that I attempted to have landlord JK join the conference call hearing by telephoning him, but was unsuccessful in so doing as he did not answer his telephone.

I must further note that the landlord testified that JK was available for the hearing on March 19th, but would be unavailable as he would be traveling in remote areas without wireless reception.

Tenants' application-

The tenants' monetary claim is \$3000. In explanation, the tenant submitted that she is requesting \$1500, for her security deposit and pet damage deposit to be returned.

As to the remaining claim of \$1500, the tenant submitted that she asked for \$1500 as the landlords asked for \$1500.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Landlords' application-

As to the issue of loss of revenue, Section 45 (1) of the Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is at least the day before the day in the month that rent is payable under the tenancy agreement. In other words, one clear calendar month before the next rent payment is due is required in giving written notice to end the tenancy.

In this case, I accept that the tenants failed to provide sufficient notice to end the tenancy, by their failure to give notice in writing to the landlords.

However, a landlord cannot sit idly by before making a claim for loss as section 7(2) of the Act requires that they take reasonable steps to minimize their loss. The landlords failed to provide evidence that they took any steps to re-rent the rental unit and I find it likely that the landlords have not attempted to re-rent the rental unit due to the home being for sale. The landlord agreed that the rental unit is still vacant while the home is for sale.

I find the insufficient notice by the tenants would cause a loss of revenue for the first half of October, but as the landlords failed to prove they took any steps to minimize their loss, I am not prepared to award the landlords loss of rent revenue for the full month of October as I find it feasible that the landlords could find new tenants by mid October had they attempted to do so.

I therefore grant the landlords a monetary award of \$750, for loss of rent revenue for one half of October, 1-15.

As to the landlords' claim for paint damage to the rental unit of \$1500, the landlords failed to prove that they have incurred a loss, as the repair or repainting has not yet been started or completed. I was also left with the clear impression that the house will be sold in the same condition as at the end of the tenancy.

I therefore find the landlord has failed to meet the test for loss and I dismiss their claim for \$1500.

Tenants' application-

As to the tenants' claim for their security deposit and pet damage deposit, as I have awarded the landlord monetary compensation of \$750, I allow the landlords to retain this amount from the collective \$1500 they are holding for the tenants' security deposit and pet damage deposit. I further order that the landlord return the balance of the two deposits, or \$750.

I dismiss the tenants' further claim for \$1500. I find this claim was a clear attempt by the tenants to offset the landlords' claim for the exact amount, as the tenants provided no basis for such a claim. The tenants' only stated reason for such a claim was due to the landlords claiming such amount. I therefore dismiss the tenants' claim of \$1500, without leave to reapply.

Both applications-

As I have found at least partial merit with both applications, I decline to award the landlords recovery of the filing fee.

Conclusion

The landlords' application has been partially granted and I have authorized them to retain \$750 from the collective \$1500 they are holding for the tenants' security deposit and pet damage deposit.

The tenants' application for a return of their security deposit and pet damage deposit, in a total amount of \$1500, has been partially granted as I have ordered the landlords to return the amount of \$750.

To ensure that the landlords return the balance of \$750, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$750, which I have enclosed with the tenants' Decision.

This monetary order has no force or effect and is null and void if the landlords return \$750 to the tenants.

Should the landlords fail to pay the tenants the amount of \$750 without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

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: March 25, 2014

Residential Tenancy Branch

