



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting them to retain the security and pet deposits in partial satisfaction of the claim and a cross-application by the tenants for an order for the return of double their security and pet deposits. Both parties participated in the conference call hearing.

At the hearing, the tenants advised that they had not received the landlords' evidence. The landlords provided proof that they sent the evidence to the address for service provided by the tenants on their application for dispute resolution. The tenants testified that when they filed their application for dispute resolution at a ServiceBC office, they had originally used their mailing address as their address for service but were told by a staff member that they should change that address to their street address. The tenants included a mailing address as part of their application.

Although the tenants did not receive the landlords' evidence, the landlord attempted to comply with the requirement to serve the tenants. I described the landlords' evidence to the tenants at the hearing and the tenants did not ask that the evidence be excluded, so I have considered it in my deliberations.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?

Are the tenants entitled to the return of any part of their security and pet deposits?

Background and Evidence

The parties agreed that the tenancy began on August 15, 2013 and ended on November 14, 2013 with rent of \$1,000.00 payable on the 15th day of each month. They further agreed that the tenants paid a \$500.00 security deposit and a \$500.00 pet deposit.

The landlords seek an award of \$1,000.00 which represents rent for the period from November 15 – December 14. The parties agreed that on October 15, the tenants provided written notice that they were ending their tenancy on November 14. As the Act requires that notice to end a tenancy be given no later than the day before rent is due for the last month of the tenancy, the

landlords argued that they are entitled to lost income for that one month period. The landlords testified that despite placing online advertisements for the rental unit, they were unable to secure a new tenant and the rental unit sat vacant. They further testified that typically in the region in which the rental unit is situated, there are more people searching for housing in the spring and summer.

The tenants argued that they believed they only had to give 30 days' notice rather than one full calendar month and that their notice was only 12 hours later than what is required under the Act, so they should not be held liable.

The parties agreed that the tenants owe \$54.07 for an outstanding Fortis BC account and \$154.65 for an outstanding BC Hydro account for a total of \$208.72.

The landlords seek to recover \$382.20 as the cost of cleaning the rental unit at the end of the tenancy. They testified that the tenants only cleaned superficially and that there was dog hair throughout the unit, marks on the windows and other areas were also left unclean. The landlords provided an invoice showing that they spent \$382.20 to clean the unit. The invoice describes cleaning of the kitchen, cabinets, fridge, stove, fan, windows, blinds, walls, bathrooms and behind appliances. The landlord submitted a copy of the condition inspection report which indicates that there was dog hair throughout the kitchen, the cupboards were not cleaned inside and the fridge and stove were not cleaned. The only other comments on the condition inspection report related to electrical work which the tenants had done and a final comment that there was dog hair in most of the room and additional cleaning required. The tenants signed the condition inspection report to indicate that they agreed that the report accurately reflected the condition of the rental unit.

The tenants testified that they spent considerable time cleaning and that after the condition inspection report was completed, they went through the unit and wiped down those areas which the landlords had said needed attention. They testified that a party on the lower floor of the unit also had a dog and that as the unit had forced air heating and shared ducting, it was possible that the hair from the dog in the unit below was being spread throughout their unit.

The landlords testified that the party on the lower floor had a dog with black fur whereas the tenants' dog has white fur, which was the colour of the dog hair found in the rental unit.

The landlords seek \$78.75 as the cost of cleaning the carpet in the rental unit. They testified that there were several rust stains in the carpet which they wanted to remove. The tenants pointed to the move-in condition inspection report which recorded that there were stains on the living room carpet at the beginning of the tenancy and provided evidence that they had rented a steam cleaner to clean the carpet at the end of the tenancy. The landlords replied that there were stains in other areas as well.

The landlords also seek to recover \$50.00 in fees to send evidence via registered mail and the \$50.00 filing fee paid to bring their application.

As for the tenants' claim, the tenants argued that because the condition inspection report indicated that there were no amounts owing, the landlord should not have been able to file a claim against their deposit and therefore they are entitled to recover double their security deposit. They also seek to recover their filing fee.

Analysis

Beginning with the tenants' claim, section 38 of the Act requires the landlords to either return the security and pet deposits within 15 days of the end of the tenancy or to file an application for dispute resolution making a claim against the deposit. Landlords who fail to act within 15 days are required to return double the amount of the deposits. In this case, the landlords filed their claim on November 28 which is within the statutorily prescribed time frame. There is nothing in the Act which prevents a landlord from filing a claim just because the condition inspection report does not indicate that there is money owing. Because the landlords complied with the requirement of section 38, I dismiss the tenants' claim for double the security and pet deposits. As the tenants were unsuccessful in their claim, I also dismiss their claim for recovery of their filing fee.

Turning to the landlords' claim, section 54 of the Act provides that when a party provides a notice ending a tenancy, if the effective date of that notice does not comply with the timeframes prescribed under the law, those dates are automatically changed to comply with the legal requirements. Because of the operation of section 54, I find that although the tenants' notice to end their tenancy listed an effective date of November 14, 2013, that date was automatically changed to December 15. The landlords were required to minimize their losses by acting reasonably to re-rent the unit and I find that they met that burden. I find that the landlords are entitled to recover \$1,000.00 in rent for the period from November 15 – December 14 and I award them that sum.

As the parties agreed that the tenants owe \$208.72 for outstanding utilities, I award the landlords that sum.

The tenants were required to leave the unit in reasonably clean condition. The landlords' photographs show that there was some cleaning left to be done, including the refrigerator and stove, but I can see nothing in either the photographs or the condition inspection report that such extensive cleaning was required that it would take 2 people working steadily for a number of hours. I have no doubt that the cleaning women hired by the landlord cleaned the unit, but I am not satisfied that such extensive cleaning was required as it would likely leave the unit in a state that was superior to the "reasonably clean" standard required of the tenants. I find it appropriate to reduce the cleaning cost to \$80.00 and I award the landlords that sum.

The condition inspection report is silent on the condition of the carpet at the end of the tenancy and the landlords did not provide any photographs showing that the carpet was unreasonably dirty. I am satisfied that the tenants rented a steam cleaner and as the tenancy lasted just 3 months and in the absence of evidence to support the landlords' claim that the carpet required

additional cleaning, I find that the tenants are not liable for the cost of carpet cleaning and I dismiss that claim.

Under the Act, the only litigation related expense I am empowered to award is the filing fee paid to bring an application. As the landlords have been substantially successful in their claim, I find they are entitled to recover that fee and I award them \$50.00.

Conclusion

In summary, the tenants' claim has been dismissed and the landlords have been successful as follows:

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|--------------------------------|-------------|
| Loss of income | \$1,000.00 |
| Cleaning | \$ 80.00 |
| Filing fee | \$ 50.00 |
| Sub-total: | \$1,130.00 |
| Less security and pet deposits | -\$1,000.00 |
| Total: | \$ 130.00 |

I order the landlords to retain the pet and security deposits in partial satisfaction of the claim and I grant the landlords a monetary order under section 67 for the balance of \$130.00. This order may be filed in the Small Claims Division of the Provincial 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: March 28, 2014

Residential Tenancy Branch

