



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Tenant MNDC, MNSD
	Landlord MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for unpaid rent, for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and for the return of double the Tenant's security deposit.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on May 15, 2014, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on April 28, 2014 in accordance with section 89 of the Act.

The Tenant and the Landlord confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is there damage to the unit site or property and if so how much?
4. Is the Landlord entitled to compensation for damage and if so how much?
5. Is the Landlord entitled to retain the Tenant's security deposit?

Tenant:

1. Are there damages or losses to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on May 8, 2013 as a fixed term tenancy with an expiry date of May 1, 2014. Rent was \$625.00 per month payable on the 31st day of each month. The Tenant paid a security deposit of \$325.00 on May 8, 2013. The Tenant said no condition inspection reports were completed and signed by the parties at the start and end of the tenancy. The Landlord said she completed a move in condition inspection report on May 24, 2013 but the Tenant did not sign it. The Landlord said she gave a copy of the move in condition inspection report to the Tenant on May 31, 2014 when the parties signed the tenancy agreement but forgot to have the Tenant sign it. As well the Landlord said a move out condition inspection report was completed on April 13, 2014 in the absences of the Tenant. The Landlord said she gave the Tenant two opportunities to do the move out condition inspection on April 3 and April 10, 2014, but the Tenant did not participate. The Tenant said no conditions inspections were done and he was not offered an opportunity to participate in doing the reports. The Tenant continued to say he requested a move in condition inspection report but the Landlord did not do the report. Neither party had corroborating evidence to support their claims as the reports submitted by the Landlord were not signed by the Tenant.

The Tenant said he gave the Landlord his forwarding address in writing on April 3, 2014 between 6:00 and 7:00 p.m. The Landlord said she was not in the rental unit at that time and the Tenant only returned the keys to her husband. The Landlord said the first time she received the Tenant's forwarding address in writing was May 1, 2014 when she received the Tenant hearing package by registered mail. The Tenant said he gave the forwarding address to the Landlord's husband on April 3, 2014. The Landlord's

husband did not attend the hearing and the Landlord said she was unable to contact him because he was at work.

The Tenant continued to say that he has applied for double his security deposit in the amount of $\$325.00 \times 2 = \650.00 because the Landlord did not return it within 15 days of the end of tenancy and receiving his forwarding address in writing. As well the Tenant said he has applied for \$104.00 of rent to be returned to him as he paid rent in cash on April 1, 2014 for 8 days and he only stayed in the unit for 3 days. The Tenant could not confirm the amount of rent he paid on April 1, 2014 and he had no corroborative evidence to prove that he paid rent on April 1, 2014. The Landlord said the Tenant did not pay any rent on April 1, 2014 as she had served him an Order of Possession on March 25, 2014 and he was overholding in the rental unit. The Landlord said the Tenant owes her 3 days rent for overholding from April 1 to April 3, 2014 in the amount of \$62.50. The Landlord said she originally thought the Tenant would owe rent from March 25, 2014 to April 3, 2014 in the amount of \$141.00 as that was when she served the Tenant the Order of Possession, but on discussion it was determined the Tenant had paid the March rent up to March 31, 2014.

The Landlord continued to say she is requesting to retain the Tenant's security deposit of \$325.00 for damages to the screen door, the walls, to the patio, to the paint in the unit and for stains to the carpet. The Landlord said the Tenant damaged all these items, but she did not submit any paid receipts for the cost of repairing the damaged items.

As well the Landlord said the Tenant took a coffee table from the unit when the Tenant left. The Landlord said she is claiming \$100.00 for this item. On questioning the Landlord agreed that although the coffee table is mentioned in clause 15 of the tenancy addendum it was not mentioned on the move out condition inspection that the Landlord submitted into evidence. The Landlord said the coffee table was borrowed and that is why she did not include it in the move out condition inspection report.

The Tenant said he did not take the coffee table from the rental unit.

Further the Landlord said she is applying for the cost of replacement keys in the amount of \$5.98, hearing preparation costs of \$36.00 and the filing fee of \$50.00.

The Landlord said in closing that she applied within the 15 days to retain the Tenant's security deposit and the Tenant has caused damage and loss to her that the Tenant should compensate her for. The Landlord said her application is for a total of \$655.98.

The Tenant said he gave the Landlord his forwarding address in writing on April 3, 2014 and that he had no further comments.

Analysis

There was much contradictory testimony given during the hearing. The Landlord said she did condition inspection reports according to the Act and regulation and that the Tenant did not give her his forwarding address until she received the Tenant's hearing package on May 1, 2014. The Tenant said he gave the Landlord his forwarding address on April 3, 2014 and he paid rent on April 1, 2014 which he now believe he should have \$104.00 returned. As well the Tenant said no condition inspection reports were completed. In reviewing the evidence and testimony the Landlord said she gave the Tenant a copy of the move in condition inspection report on May 31, 2014 when the parties were signing the tenancy agreement. This was an opportunity for both parties to review the condition inspection report and to sign it. Based on the balance of probabilities I do not accept the move in condition inspection report was completed as the Tenant did not sign the report on May 31, 2014 when the Landlord said she gave it to the Tenant; I find the condition inspection report is not valid. Consequently pursuant to section 24 of the Act the Landlord's right to claim against the Tenant's security deposit for **damages** is extinguished.

As well the Tenant original said he gave the Landlord his forwarding address in writing on April 3, 2014, but then the Tenant said he gave it to the Landlord's husband. Inconsistent testimony put into question whether the Tenant did or did not give the Landlord the forwarding address in writing on April 3, 2014. Based the lack of evidence from the Tenant and on the balance of probabilities I accept the Landlord testimony that she first received the Tenant forwarding address in the hearing package on May 1, 2014, which means the Landlord made her application to retain the Tenant's security deposit within the time line of the Act. The Tenant's request to double the security deposit is dismissed without leave to reapply.

Further both parties agreed the Tenant stayed in the renal unit until April 3, 2014, therefore rent is owed for overholding from April 1, 2014 to April 3, 2014. I find that as the Tenant has no corroboration evidence to prove a rent payment was made on April 1, 2014, that he was served with an Order of Possession on March 25, 2014 and based on the balance of probabilities, I accept the Landlord's testimony that no rent payment was made on April 1, 2014. I award the Landlord \$62.50 for overholding rent from April 1 to April 3, 2014. The amount of \$62.50 will be retained from the security deposit for unpaid rent. The Tenant's claim for the return of rent from April 3 to April 8, 2014 is dismissed without leave to reapply for lack of evidence.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

The Landlord's claims for the coffee table for \$100.00 and key replacement for \$5.98 have not been proven or verified by receipts; therefore I dismiss these claims without leave to reapply.

The Landlord has also requested compensation for the costs to prepare for the hearing for photocopying and photograph printing. These costs are not eligible as they are part of the hearing process not the tenancy. The Landlord's hearing preparation costs of \$36.00 are dismissed without leave to reapply.

As the Tenant has been partially successful in this matter the Tenant will receive a monetary order for the balance owing as following:

	Security Deposit	\$ 325.00
Less	Overholding rent	\$ 62.50
	Balance owing	\$ 262.50

As the Landlord was unsuccessful in this matter I order the Landlord to bear the \$50.00 cost of the filing fee for her application that she has already paid.

Conclusion

A Monetary Order in the amount of \$262.50 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: August 26, 2014

Residential Tenancy Branch

