



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, MNDC, FF
For the tenant: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenants’ security deposit, a monetary order alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenants applied for a return of their security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

At the outset of the hearing, neither party raised any concerns or issues regarding service of the applications or documentary evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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. Is the landlord entitled to retain the tenants’ security deposit, for further monetary compensation, and to recover the filing fee?

2. Are the tenants entitled to a monetary order comprised of double their security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on November 1, 2013, ended on February 28, 2014, monthly rent was \$850, and the tenants paid a security deposit of \$425 at the beginning of the tenancy.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenants' security deposit.

Landlord's application-

The landlord's monetary claim is in the amount of \$669.74, for replacement of a broken window in the rental unit.

The landlord submitted that the rental unit was freshly renovated at the start of the tenancy, and although there was not a move-in condition inspection report, the landlord has owned the residential property since 1991, when it was built, and there were never any issues with windows.

The landlord submitted that the tenants, through their actions, either broke the window or caused the window to be broken. The landlord submitted that it was possible that the window was broken by their guests during a party shortly before the tenancy ended.

The landlord confirmed that the windows were the original windows, or from 1991.

The landlord's relevant documentary evidence included quotations for the window and proof of payment for the window.

In response, the tenants submitted that they never abused the window and did not break or cause the window to be broken. The tenants submitted further that the aluminum windows caused an undue amount of moisture, which required the tenants to keep mopping up the excess water.

The tenants submitted that when they noticed that the window cracked, the landlord was out of town, but that they alerted him to the window being broken upon his return.

In rebuttal, the landlord submitted that windows don't just break.

Tenants' application-

The tenants' monetary claim is in the amount of \$900, comprised of their security deposit of \$425, doubled to \$850, and for recovery of the filing fee paid for this application in the amount of \$50.

The tenants submitted that they provided the landlord with their written forwarding address on February 28, 2014, on a separate piece of paper at the rental property, and that the landlord has not returned any portion of their security deposit.

The tenant's relevant documentary evidence included a written response to the landlord's application, email communication between the parties, and the results of an internet research on window thermal fractures.

Analysis

Landlord's application-

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord 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 party took reasonable measures to mitigate their loss.

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

It is clear that a window in the rental unit broke during the tenancy of the tenants as both parties acknowledged that it did; however, I cannot conclude that every instance of damage to the rental unit is a tenant responsibility.

In the case before me, I find the landlord submitted insufficient evidence that the tenants' negligence caused the window to break. As such I do not find that the landlord has met his burden of proof to establish that the tenants should be responsible for a window replacement and I dismiss his monetary claim.

Even had I not dismissed the landlord's monetary claim for the stated reason, I would alternatively dismiss the landlord's claim as I find that the window, installed in 1991, had been fully depreciated. Residential Tenancy Branch ("RTB") Guidelines 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Windows have a useful life of 15 years and therefore I find that the window was fully depreciated at the time of breakage.

As I have dismissed the landlord's monetary claim for window replacement, I dismiss his request for recovery of the filing fee paid for this application.

Tenant's application-

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence was that the tenancy ended and the landlord received the tenants' written forwarding address on February 28, 2014, and that when he made his application for dispute resolution claiming against the security deposit on March 13, 2014, the landlord complied with section 38(1) of the *Act*.

Although I find the tenants are not therefore entitled to double their security deposit, as I have dismissed the landlord's monetary claim against the tenants' security deposit, I find the tenants are entitled to a return of their security deposit of \$425.

I also allow the tenants recovery of their filing fee of \$50 paid for this application.

Due to the above I therefore grant the tenants a monetary award of \$475, comprised of their security deposit of \$425 and for recovery of the filing fee of \$50.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants' application for monetary compensation is granted in part as I have granted them a monetary award of \$475.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$475, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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: June 30, 2014

Residential Tenancy Branch

