



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF
MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlords for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and ii) by the tenants for a monetary order reflecting the double return of the security deposit / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence before me for this tenancy which began on May 01, 2013. Monthly rent was \$1,500.00, and a security deposit of \$750.00 was collected. A move-in condition inspection report was not completed.

Tenancy ended on April 30, 2014. The parties agree that the tenants provided the landlords with their forwarding address in a letter dated sometime prior to the end of March 2014. A move-out condition inspection report was completed with the participation of both parties on April 30, 2014. However, a copy of this report is not in evidence before me, and neither did the landlords provide a copy of the report to the tenants.

The landlords filed their application for dispute resolution on May 08, 2014. The landlords seek compensation in the total amount of \$2,943.15. A monetary order worksheet has not been completed. Rather, the landlords have set out the various aspects of compensation claimed within the narrative of a 4 page letter.

The tenants filed their application for dispute resolution on August 07, 2014.
Compensation is sought in the total amount of \$1,550.00.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

Based on the documentary evidence and testimony, the various aspects of the respective applications and my related findings are set out below.

TENANTS

\$1,500.00: *(2 x \$750.00) double the return of the original security deposit*

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 day after the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

In the circumstances of this dispute, I find that the tenants provided their forwarding address in writing sometime in March 2014, that tenancy subsequently ended on April

30, 2014, and that the landlords then filed their application to retain the security deposit on May 08, 2014. In short, as the landlords filed their application within the statutory 15 day period after tenancy ended, I find that the tenants have not established entitlement to the double return of the security deposit.

In regard to the move-in condition inspection report, section 24 of the Act provides in part as follows:

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to a residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As earlier noted, a move-in condition inspection report was not completed.

In relation to the move-out condition inspection report, section 36 of the Act provides in part as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 18 of the Regulation addresses **Condition inspection report**, and provides that the landlord must provide the tenant with a copy of a move-out condition inspection report within 15 days after the later of “the date the condition inspection is completed” and “the date the landlord receives the tenant’s forwarding address in writing.”

As previously noted, while a move-out condition inspection report was completed, a copy of the report was not ever given to the tenants.

Following from all of the foregoing, I find that the landlords’ right to a claim against the tenants’ security deposit is extinguished. In the result, I find that the tenants have established entitlement to repayment of the original security deposit of **\$750.00**.

\$50.00: *filing fee*

As the tenants have succeeded in establishing entitlement to recovery of the full amount of the original security deposit, I find that they have also established entitlement to recovery of the full filing fee.

Total Entitlement: \$800.00 (\$750.00 + \$50.00)

LANDLORDS

\$2,492.27: *labour and supplies for cleaning and repairs*

Some aspects of the landlords' claim are estimates only, whereas receipts are included for certain other miscellaneous expenses which have been incurred. However, in the absence of the comparative results of move-in and move-out condition inspection reports, I find that the landlords have failed to meet the burden of proving entitlement to any of the costs claimed which arise from cleaning and repairs. This portion of the application is therefore dismissed.

\$400.88: *hydro & gas utilities*

The landlords claim that the tenants agreed to be responsible for 2/3^{rds} or 66.66% of the cost of hydro and gas utilities. The landlords seek related compensation from the tenants as follows:

Hydro

\$120.13: *for the period January 23 to March 21, 2014.*

\$72.00: *per diem calculation from March 22 to April 30, 2014. Not disputed by the tenants.*

Gas (Fortis)

\$108.58: *for the period February 21 to March 21, 2014.*

\$87.00: *for the period March 22 to April 21, 2014.*

\$13.17: *per diem calculation from April 22 to 30, 2014. Not disputed by the tenants.*

The tenants do not dispute the limited amount of **\$85.17** included above (\$72.00 + \$13.17). Based on the documentary evidence and testimony, and in the absence of any conclusive evidence to the contrary, I find that the landlords have also met the burden of establishing entitlement to the balance claimed of **\$315.71** (\$400.88 - \$85.17).

\$50.00: *filing fee*

As the landlords have achieved relatively limited success with their application, I find that they have established entitlement to recovery of **\$25.00**, or half the filing fee.

Total Entitlement: \$425.88 (\$85.17 + \$315.71 + \$25.00).

Offsetting the respective entitlements, I find that the tenants have established a net entitlement to **\$374.12** (\$800.00 - \$425.88), and I hereby issue a **monetary order** in their favor for this amount.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$374.12**. Should it be necessary, this order may be served on the landlords, filed in the 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: September 04, 2014

Residential Tenancy Branch

