



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlords' application (filed June 16, 2014): MNDC, MND, MNSD, FF

Tenant's application (filed September 23, 2014): MNSD, FF

Introduction

This Hearing was convened to consider cross applications. The Landlords filed an Application for Dispute Resolution seeking a monetary award for damages; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of their monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlords served the Tenant with their Notice of Hearing documents and copies of their documentary evidence by handing the documents to the Tenant at his new residence on June 20, 2014.

It was also determined that the Landlords were served with the Tenant's Notice of Hearing documents and copies of his documentary evidence by registered mail on September 28, 2014.

Issues to be Decided

1. Are the Landlords entitled to a monetary award for damage to the rental unit?
2. Is the Tenant entitled to a monetary award for double the amount of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on April 31, 2013, and ended on May 31, 2014. Monthly rent was \$1,350.00, due on the last day of each month. The Tenant paid a security deposit in the amount of \$675.00 at the beginning of the tenancy.

The Tenant provided the Landlords with his forwarding address in writing on June 11, 2014. A copy of the Tenant's note was provided in evidence.

The Landlords gave the following testimony:

The Landlords testified that the Tenant had "numerous" vehicles which he stored at the rental property. They testified that the Tenant was aware that use of the garage was not included in the tenancy agreement, but that he ignored that fact and performed oil changes in the garage. The Landlords submitted that the Tenant's vehicles left oil stains in the garage and driveway that could not be removed by pressure washing. The Landlords stated that they seek to recover the cost of replacing the areas damaged by oil leaks. The Landlords stated that they have not yet replaced these areas.

The Landlords' Application for Dispute Resolution provides that they are seeking a monetary award in the amount of \$1,400.00.

The Landlords stated that the Tenant left garbage at the rental unit and that they had to take it to the dump. The Landlords seek an award in the amount of \$45.00 for dump fees and gas.

The Landlords testified that they are also seeking \$120.00 per month as a fee for the Tenant parking vehicles on the rental property. They stated that it would be much more if the Tenant had to pay a storage facility.

The Landlords seek a total monetary award in the amount of \$1,400.00, as indicated on their Application for Dispute Resolution.

The Landlords acknowledged that they had not given details of their monetary claim to the Tenant or the Residential Tenancy Branch prior to the Hearing. Nor had they provided receipts or estimates with respect to any of their claims. At the end of their testimony, they stated that they "just want to keep the security deposit".

The Tenant gave the following testimony:

The Tenant disputed that Landlords' claim in its entirety. He stated that Landlord had agreed that he had use of the garage at the beginning of the tenancy. He testified that the car that was parked in the garage was his "show car", was worth \$90,000.00, and does not leak. The Tenant stated that the oil stains must have been there at the beginning of the tenancy.

The Tenant stated that the Landlord did not require him to sign an Condition Inspection Report at the end of the tenancy. He stated that the Landlord KD told him that it wasn't necessary to sign any forms and that he would get a refund of \$475.00 from her mother and an additional \$100.00 for each of two holes if he repaired them. The Tenant stated that he repaired the holes and expected to get his full security deposit back, but when he went to pick up his refund cheque on June 6, 2014, he was refused return of any of the security deposit.

Analysis

Are the Landlords entitled to a monetary award for damage to the rental unit?

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlords to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the Landlords followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Condition Inspection Reports must be completed at the beginning and the end of a tenancy. The onus is on the Landlord to arrange for the Condition Inspections to take place. Section 21 of the regulation provides that a Condition Inspection Report, completed in accordance with Part 3 of the regulation, is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either party has a preponderance of evidence to the contrary.

I find that the Landlords' documentary evidence is not sufficient to prove that the oil stains were not present at the beginning of the tenancy. A copy of the Condition Inspection Report for the move in inspection was not provided in evidence.

The Tenant denied causing any damage to the rental unit, other than the two holes which he testified he repaired. I find that the Landlords did not provide sufficient evidence to support their claim that the Tenant was responsible for causing damages or sufficient evidence of the cost of repairs and therefore, **the Landlords' claim is dismissed without leave to reapply.**

Is the Tenant entitled to a monetary award for double the amount of the security deposit?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy **and** after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

In this case, I find that the tenancy ended on May 31, 2014. However, the Tenant provided insufficient evidence of if or when he provided the Landlords with his forwarding address in writing. Therefore, I find that the Tenant is not entitled to compensation under Section 38(6) of the Act. However, I find that he is entitled to return of the security deposit in the amount of **\$675.00**, because the Landlords have extinguished their right to claim against the deposit for damages under the provisions of

Section 36(2) of the Act. In any event, the Landlords have not been successful in their damage claim.

The Tenant has been partially successful in his Application, and therefore I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$725.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (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: October 28, 2014

Residential Tenancy Branch

