



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNR, MNSD, RPP, FF
For the landlord: MNSD, MNDC, FF

Introduction

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

The tenants' amended application sought a monetary order for the cost of emergency repairs, a return of their security deposit, an order requiring the landlord to return the tenant's personal possessions, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenants' security deposit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

Tenant "MZ" (hereafter "tenant") and the landlord's agent/spouse (hereafter "landlord") attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

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

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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Are the tenants entitled to monetary compensation for costs of emergency repairs, a return of their security deposit, a return of personal property, and to recovery of the filing fee paid for this application?
2. Is the landlord entitled to keep the tenants' security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties show that the tenancy began in November 15, 2014, ended on April 12, 2015, monthly rent was \$1200.00, due on the 15th day of each month, and the tenants paid a security deposit to the landlord in the amount of \$600.00, which has been retained by the landlord. There was no written tenancy agreement.

Tenants' application-

The tenants claim the amount of \$682.50, as the costs of performing emergency repairs during the tenancy, their security deposit of \$600.00, and \$80.00 for 2 days rent. The tenants also claim the return of an adjustable elbow purchased by them at a home improvement store for use in the rental unit.

As to their claim for the costs of emergency repairs, the tenant submitted that her husband, the other tenant, diagnosed and relit the boiler and hot water tank 12 times near the beginning of the tenancy through February 2015. As such, the tenants attempted to charge the landlord \$55.00 per instance of relighting the boiler and the water tank, or \$650.00, plus \$32.50 for GST.

The tenant submitted that they noticed the boiler and hot water tank were not functioning properly in November, and notified the landlord, without an adequate response from the landlord. The tenant stated that the landlord should have called a technician, but as she would not, the tenant's spouse had to keep maintaining the system. The tenant submitted further that the landlord did not make any attempts to address the repair issue, as she knew the tenant's husband could re-light the boiler and hot water tank.

The water tank was finally changed in February, and according to the tenants, they were entitled to compensation for making emergency repairs. As such, the tenants

deducted the amount of \$682.50 from a monthly rent payment due on March 15, 2015, as compensation and claim that they are entitled to this amount.

The tenant submitted that they received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") from the landlord on April 4, 2015, listing unpaid rent of \$682.50, and a move-out date of April 14, 2015. The tenant submitted that as they moved out 2 days early, or April 12, 2015, they are entitled to \$80.00 in prorated rent for those 2 days.

As to the tenants' security deposit, the tenant submitted they provided the landlord their written forwarding address in their application for dispute resolution and are entitled to its return.

As to the adjustable elbow, the tenant submitted that her spouse installed the elbow under the vent, as the one previously installed did not fit properly. The elbow was purchased by the tenants, showing a cost of \$6.08.

The tenant's relevant documentary evidence included, but was not limited to, a receipt from the home improvement store, an invoice created by the tenants showing the amount of \$682.50, written submissions, and digital evidence.

Landlord's response-

The landlord submitted that the service of the boiler and hot water tank were not emergency repairs, as it just required a re-lighting; however, the tenants refused the landlord entry to make the service, according to the landlord.

The landlord submitted further that they received no notices of charges or that the tenant would charge for re-lighting the hot water tank and that they were in the rental unit for 3 weeks prior to the tenancy for painting, using heat, and there was never an issue with the boiler or hot water tank.

The landlord submitted further that the phone calls registered on the tenants' digital evidence shows just 3-4 calls during a several month period and that they finally changed the hot water tank, even though it was not old.

As to the adjustable arm, the landlord submitted that they were aware the tenant changed the arm, as the previous one fit properly, but that the tenant could have the one they installed.

Landlord's application-

The landlord's monetary claim is \$682.50 for unpaid rent, the amount deducted by the tenants, which caused the landlord to issue the Notice.

The landlord submitted that there was a clerical error in their evidence, as pointed out by the tenants, as they originally claimed unpaid rent of \$682.50 for the rental period of February 15-March 15, 2015, but was actually for the rental period of March 15-April 15, 2015, as the tenants paid only \$517.50, as shown on the Notice.

Analysis

Tenants' application-

Claim for costs of emergency repairs-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction, authorization from an Arbitrator or expenditures incurred to make an "emergency repair". As defined by section 33 of the Act, emergency repairs are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing,

- (i) *major leaks in pipes or the roof,*
- (ii) *damaged or blocked water or sewer pipes or plumbing fixtures,*
- (iii) *the primary heating system,*
- (iv) *damaged or defective locks that give access to a rental unit,*
- (v) *the electrical systems, or*
- (vi) *in prescribed circumstances, a rental unit or residential property.*

Under 33(3), *a tenant may have emergency repairs made only when all of the following conditions are met:*

- (a) *emergency repairs are needed;*
- (b) *the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;*

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Under 33(5) a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In the case before me, the tenants have claimed the costs of re-lighting the hot water tank. I find that the hot water tank having to be re-lit, while perhaps inconvenient, does not meet the definition of an emergency repair as contemplated and defined by the Act.

If there was a matter of repairs to the rental unit, such as the hot water tank going out, the tenants' remedy would have been to file an application for dispute resolution seeking the landlord's compliance with section 32 of the Act, or to make repairs.

As I find that the tenants have not performed emergency repairs, I find they were not entitled to deduct amounts from their monthly rent and I therefore dismiss their claim for \$682.50.

Security deposit-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

In this case, the tenant confirmed not providing their forwarding address to the landlord prior to making their application; however, the landlord has claimed against the tenants' security deposit in her application, and I will address the matter of the tenants' security deposit when considering the landlord's application.

2 days rent credit-

The tenants claim they are entitled to \$80.00 as they vacated the rental unit on April 12, 2015, rather than April 14, 2015, as listed on the Notice. I find the tenants' decision to vacate on April 12, 2015, to be their choice, and therefore, I find the tenants are unable

to prove that the landlord has not complied with the Act, as required under section 67 when seeking compensation from the other party.

I therefore dismiss the tenants' claim for \$80.00.

Return of the adjustable elbow-

At the hearing, the parties agreed that the tenant would attend the landlord's place of business on May 21, 2015, in the morning, and the landlord would either return the adjustable elbow or give the tenant monetary compensation of \$6.08. I have therefore made no finding on the tenants' request due to the settlement of this issue by the parties.

Landlord's application-

When the landlord filed her application on April 21, 2015, I find that she filed her application within 15 days of the end of the tenancy on April 12, 2015, even though the tenants confirmed not having provided a written forwarding address.

As I have dismissed the tenants' claim for costs of emergency repairs, as I determined that re-lighting the hot water tank was not an emergency repair, I find that the tenants owed monthly rent of \$1200.00 on March 15, 2015, pursuant to their agreed upon oral tenancy agreement and section 26 of the Act, and paid only \$517.50. I therefore find the tenants owe a rent deficiency of \$682.50 for the last month of the tenancy and grant the landlord a monetary award in that amount.

I also grant the landlord recovery of her filing fee paid for this application of \$50.00.

Due to the above, I find the landlord is entitled to a total monetary award of \$732.50, comprised of a rent deficiency of \$682.50 and \$50.00 for recovery of the filing fee paid for this application.

At the landlord's request, I direct her to retain the tenants' security deposit of \$600.00 in partial satisfaction of her monetary award of \$732.50 and I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$132.50, which is enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay, the monetary order may be served on the tenants and may be filed in the Provincial Court of British

Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I note for the benefit of the tenants, as I have directed the landlord to retain the tenants' security deposit in partial satisfaction of her monetary award, I dismiss the tenants' claim for a return of their security deposit. I likewise dismiss the tenants' claim for recovery of their filing fee.

Conclusion

The tenants' application is dismissed, without leave to reapply.

The landlord's application for monetary compensation is granted as she has been granted a monetary award of \$732.50, has been directed to retain the tenant's security deposit in partial satisfaction, and granted a monetary order for the balance due.

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: May 19, 2015

Residential Tenancy Branch

