



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' Application filed August 19, 2014: MNDC; MNSD; FF

Landlord's Application filed February 25, 2015: MND; MNSD; FF

Introduction

This Hearing was scheduled for cross Applications. The Tenants seek return of the security deposit; compensation for damage or loss under Section 38 of the Act; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a monetary award for damages; to apply the security deposit towards partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants.

The Hearing was adjourned on March 11, 2015, due to an administrative error. An Interim Decision was rendered on March 18, 2015, which should be read in conjunction with this Decision.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that the Tenants serviced the Landlord with their Notice of Hearing package and copies of their documentary evidence, by registered mail, sent August 20, 2014. The Tenants provided the tracking number for the registered package.

It was also determined that the Landlord hand delivered her Notice of Hearing package and copies of her documentary evidence to the Tenant MA at her place of employment. The Tenant AF was not served in accordance with the provisions of the Act; however, he signed into the Hearing and I find that he was sufficiently served for the purposes of the Landlord's Application.

Issues to be Decided

- Are the Tenants entitled to return of the security deposit and compensation pursuant to the provisions of Section 38 of the Act?
- Is the Landlord entitled to a monetary award for damages to the rental unit and to apply the security deposit towards partial satisfaction of her monetary award?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 1, 2012, and ended on July 1, 2014. Monthly rent was \$1,500.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$750.00 at the beginning of the tenancy.

The Tenants gave the following testimony:

The Tenants testified that the Landlord took over their tenancy from the previous landlord. They stated that Condition Inspection Reports were done at the beginning of the tenancy with their previous landlord and the end of the tenancy with the Landlord. The Tenants stated that they provided the Landlord with their forwarding address on the move-out Condition Inspection Report dated July 1, 2014. The Tenants stated that they did not agree that the Landlord could keep any of the security deposit and that the Landlord has not returned any of the security deposit to the Tenants. The Tenants seek return of the security deposit and compensation pursuant to Section 38(6) of the Act in the total amount of **\$1,500.00**.

The Tenants stated that when the Landlord took over the tenancy, she told them that she is a new landlord and that if anything needed to be done, she would not raise the rent for the following year if the Tenants took care of it. They testified that in early 2014 at 11:00 p.m., the Tenant MA heard a drip coming from the kitchen. She went to investigate and saw a “drip coming from the ceiling”. She stated that it was a small leak and it soon stopped. MA stated that it was too late to call the building manager, so they called the property manager the next day, as well as the upstairs tenant.

On the next day, the drip appeared again. The upstairs tenant looked at it, but didn’t do anything. The building manager also had a look at it. The Tenants testified that the water marks left by the leak were not major, only cosmetic, and that there didn’t appear to be any structural damage. They stated that the building manager checked with the upstairs tenant and discovered that there were renovations in the upstairs suite. The Tenants stated that there was no further leaking from the ceiling.

The Tenants stated that they did no damage to the rental unit other than normal wear and tear. They dispute the Landlord’s claim in its entirety.

The Landlord gave the following testimony:

The Landlord stated that when she first took over the tenancy, she met with the Tenants at the rental unit and had a meeting. She stated that they “looked around and agreed the unit was in fair condition, but did not do inspection”.

The Landlord stated that the water leak happened 6 months before she found out and that no one would take responsibility. She stated that her insurance finally agreed to pay for damages on November 2, 2014, but that there was still a deductible in the amount of \$500.00. The Landlord seeks to recover the cost of the deductible from the Tenants.

The Landlord also stated that the Tenants did not pay a move-in or move-out fee, each in the amount of \$25.00, to the strata corporation; that the Tenants caused damage to the master bathroom tub; a plug is missing; one kitchen floor tile was damaged; the kitchen cabinets were damaged; the balcony screen door was missing; the toilet in the second bathroom was “twisted”. She stated that she kept the security deposit to pay for those repairs and the strata move-in-out fees.

The Landlord stated that the building manager says he never got a report about a leak from the Tenants. The Landlord stated that the strata corporation also denies that they received notice about the leak. The Landlord testified that the strata said that if they knew about the leak when it happened, they could have gone against the upstairs tenant for the cost of the Landlord’s deductible. The Landlord denied that she told the Tenants that they could make any repairs in exchange for no rent increase. She stated that the damage was caused by the Tenants’ omission because they did not let her know about the leak.

Analysis

Regarding the Tenants’ Application

Section 38(1) of the Act provides:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

[my emphasis added]

I find that the Tenants provided the Landlord with their forwarding address on July 1, 2014, and that the Landlord did not return the security deposit, or file an application against it, within the 15 day time limit.

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. Therefore, I find that the Tenants are entitled to a monetary order for double the amount of the security deposit in the amount of **\$1,500.00**.

The Tenants have been successful in their Application and I find that they are entitled to recover the cost of the filing fee from the Landlord in the amount of **\$50.00**.

Regarding the Landlord's Application:

The Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenants pay for the loss requires the Landlord to satisfy 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 Tenants in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord provided evidence of the cost of the repairs which amounted to \$3,299.42, which is no small amount. She also provided evidence that the deductible charged by her insurance company is \$500.00. However; I accept the Tenants' testimony that the damage to the ceiling was not caused by the Tenants. I find that the Landlord has no claim against the Tenants in this regard, although she may have a claim in another jurisdiction against the strata or the upstairs occupant.

With respect to the Landlord's claim for move in and move out fees, I find that the Landlord provided sufficient evidence that the strata charged fees of \$25.00 for each move (in or out). However, the Landlord did not provide evidence that these fees had not been paid by the Tenant or that the Landlord had paid the fees on their behalf. Therefore, the Landlord has failed to provide sufficient evidence that she has suffered a loss in this regard. This portion of her claim is also dismissed.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **\$1,550.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: May 27, 2015

Residential Tenancy Branch

