



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF

For the landlord: MNSD, MNDC, MND, MNR, 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 ("Act").

The tenants applied for a return of their security deposit, doubled, and for recovery of the filing fee paid for this application.

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

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.

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

Preliminary matter- Although the tenants' application was filed on January 29, 2015, the landlords filed their application on May 5, 2015. On June 3, 2015, the landlords submitted additional documentary evidence and the tenants submitted that they received this evidence two days prior to the hearing. The tenants did not request an adjournment of the hearing, and the hearing continued with my acceptance of the landlords' evidence.

Additionally, the landlords, in the evidence package of June 3, 2015, was an amended monetary order worksheet showing an increased monetary claim. The landlords were

informed that I would not accept an increased monetary claim as it may not be increased through evidence, only through an amended application. The hearing proceeded on the landlords' original monetary claim.

Preliminary matter#2-Landlord "HN" raised an issue regarding the tenants' service of their evidence to the landlords. HN submitted that the other listed landlord, "RN", was not served the tenants' separately, but rather both sets of evidence for the landlords were contained in 1 envelope. In response to my question, RN confirmed that he had received and reviewed the tenants' evidence. I therefore accepted that both the landlords received the tenants' evidence and had full opportunity to respond, if they chose to do so.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order comprised of double their security deposit and to recovery of the filing fee paid for this application?
2. Are the landlords entitled to retain 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 shows that this tenancy began on February 2, 2012, that the tenants vacated the rental unit on November 29, 2014, that monthly rent was \$1400.00, and the tenants paid a security deposit of \$700.00. The landlords did write a cheque to the tenants for a return of a partial security deposit; however, the landlords placed a stop payment on the cheque.

Tenants' application-

The tenants' monetary claim is in the amount of \$1400.00, comprised of their security deposit of \$700.00, doubled.

The tenant submitted that they provided the landlord with their written forwarding address on December 6, 2014, on the move-out condition inspection report and that as the landlords failed to return the deposit, they are entitled to double that amount.

Tenant "MB" submitted that although he signed the part of the move-out condition inspection report agreeing to deductions of \$700.00, he submitted further that he did not understand that he was signing over their security deposit, as another part of the condition inspection report shows that he disagreed with the report and that the landlords understood this as well, as they did attempt to return a portion of the security deposit, or \$334.59, prior to stopping the payment.

The tenant submitted that he believed he was signing that the keys were being returned, as noted above on the same page. The tenants submitted a copy of the condition inspection report.

The tenant submitted further that the property was left in good condition and that the only 2 deficiencies noted on the report were the delaminated kitchen cupboards and nail holes. The tenant pointed out that the delaminated kitchen cupboards were also mentioned on the move-in condition inspection report and that as they were brittle to begin with, they broke when cleaning.

Landlords' response-

The landlords submitted that the charge to the tenants, the deduction from their security deposit, was for repair to a hole near the exhaust fan for the security camera installed by the tenants.

Landlords' application-

The landlords' monetary claim is as follows:

Cabinetry repair quote	\$438.36
Cabinetry repair quote	\$197.35
Locksmith	\$126.00
Carpet cleaner purchase	\$137.18
Replacement of door stopper	\$2.23
Strata fee	\$200.00
Strata fee	\$200.00
Cancelled cheque fee	\$7.00
Various gas receipts, Nov. 23	\$108.19
Airline travel	\$595.38
Unpaid rent, Dec. '14	\$1400.00
Late rent, app fee	\$25.00
Cleaning supplies	\$31.67
Cleaning supplies	\$11.48
Fuel for rental car	\$15.91
Fuel for travel, April '15	\$83.40
Priority mail costs	\$20.55
Registered mail costs	\$10.50
Registered mail costs	\$10.50

The participants provided the following oral evidence in support of and in response to the landlords' application.

Cabinetry repair-The landlords submitted that it is necessary to make repairs to the hole left by the tenants' installation of a security cabinet and to replace the cracked kitchen cupboard where the laminate was damaged by the tenants.

The landlords confirmed not making any repairs or incurring any costs, although two subsequent sets of tenants have moved into the rental unit.

In response, the tenant submitted that there were no issues concerning alleged damage to the cabinetry raised on the move-out condition inspection report, and that as noted on the move-in condition inspection report, the kitchen cupboards were damaged at the beginning of the tenancy.

Locksmith charges-In support of this claim, the landlord submitted that the tenants changed the front door lock and then changed it back, as well as changing the storage locker key, without permission.

The landlord confirmed not paying for a locksmith as the locks have not been changed since the end of this tenancy.

In response, the tenant submitted that the locks were changed as the front door lock was deficient, but that he did change the locks back to the original prior to returning the keys to the landlord. The submitted further that the storage lock was changed as the strata instructed them to do so, due to break-ins.

The tenant pointed out that the landlord signed on the move-out condition inspection report that the keys were returned.

Carpet cleaner purchase-The landlord submitted that as the tenants failed to clean the carpets prior to moving out, she purchased a carpet cleaning machine, which she now leaves in the rental unit for other tenants' use.

In response, the tenant submitted that there were different stains on the carpet when they moved in and that the carpet was cleaned after 2 years of the tenancy. Any other issue with the carpet was due to reasonable wear and tear, according to the tenant.

Replacement of door stopper-The landlord submitted that a door stop was missing noticed after the tenancy ended and it was necessary to replace it.

In response, the tenant submitted that on December 6, 2014, there was an agreement to give the new tenants the doorstep, and that the amount claimed was too insignificant to dispute.

Strata fee (1)-The landlord submitted that this claim is comprised of the fee charged by the strata for moving in or out. In this case, the landlords' claim is for the tenants' move-out fee and the subsequent tenants' move-in fee. The landlords claim they are entitled to the move-in fee by the next tenants due to the insufficient notice given by the tenants that they were vacating.

In response to my question, the landlord submitted that the tenants did sign Form K signifying tenant responsibility for strata charges, but did not submit a copy.

In response, the tenant submitted that he was never made aware of any charges and that the tenants had not signed a Form K agreeing to strata charges.

Strata fee (2)-As to this claim, the landlords explained that this fee was the move-out fee of the subsequent tenants and the move-in fee of the 2nd subsequent set of tenants as the tenants poisoned the landlords' and the subsequent tenants' relationship.

Cancelled cheque fee-The landlord submitted that this was a bank charge for the cheque on which the tenants placed a stop payment.

In response, the tenant submitted that as the end of the tenancy was approaching, they notified the landlords that the postdated cheques they had previously written would be cancelled, in order to issue another cheque for the prorated rent for December 2014.

The tenant submitted that new tenants moved into the rental unit on December 6 Or 7, 2014.

Various gas receipts, Nov. 23-The landlords submitted that they are requesting fuel expenses in traveling to the rental unit from their home in another city. The costs were incurred to meet with prospective tenants.

No response was required from the tenants.

Airline travel-The landlords submitted that this expense is for travel in order to meet with the tenants, again as they lived in another city apart from the rental unit.

No response was required from the tenants.

Unpaid rent, Dec. '14-The landlords submitted that they are entitled to unpaid rent for the month following the end of the tenancy, as the tenants did not provide a month's notice that they were vacating.

The landlords confirmed that the tenants notified them that they were moving out on November 29, 2014, and that new tenants moved into the rental unit on December 7, 2014. The landlords were not sure of the amount of rent paid by the new tenants for December 2014.

In response, the tenants submitted that they had agreed to pay a pro-rated amount of rent for December 2014, to account for a rent deficiency until the new tenants moved into the rental unit on December 6 or 7, 2014.

Late rent, app fee-When asked to explain this claim, the landlords submitted that this fee was in the tenancy agreement, but were unable to refer to the appropriate section.

No response was required from the tenants.

Cleaning supplies-The landlord submitted that the rental unit was not properly cleaned by the tenants prior to vacating, and there is still a certain amount of cleaning to be done.

The tenant submitted that there were check marks on the move-out condition inspection report noting that there were no issues with cleaning.

Fuel for rental car-The landlords' claim was made on the basis that they live in another city apart from the rental unit.

No response was required from the tenants.

Fuel for travel, April '15-In explaining this claim, the landlord submitted that the tenants damaged the relationship between them and the tenants moving into the rental unit in December 2014, so that when they moved out in March 2015, it was necessary to secure the 2nd subsequent tenants, involving more travel costs.

No response was required from the tenants.

Priority and registered mail costs-This claim is for costs of correspondence with the tenants.

No response was required from the tenants.

The landlords' relevant evidence included, but was not limited to, receipts for fuel, travel, and other claimed expenses, copies of self-prepared invoices sent to the tenants, a written tenancy agreement, a move-in and move-out condition inspection report, and copies of photographs of the rental unit

Analysis

Tenants' 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.

Despite subsections (1) and (6), however, Section 38(4) allows a landlord to retain an amount from the security deposit if, at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

In the case before me, I accept that the tenant was not aware that he had signed the portion of the move-out condition inspection report allowing the landlords to a deduction

from the security deposit of \$700.00, the amount of the security deposit. In reaching this conclusion, I relied upon the tenant's signature on another part of the condition inspection report stating that he disagreed with the report and also upon the fact the landlord did send a partial refund to the tenants, even though they ultimately placed a stop-payment on that cheque.

Even though I accept that the tenant was not aware that he had given the landlords permission to retain the security deposit of \$700.00, I nonetheless find that the landlords did have the tenant's written permission to keep the security deposit, as per the tenant's signature on the move-out condition inspection report. As such, I do not find that the tenants are entitled to double their security deposit.

I will reserve my findings on granting the tenants a return of any or all of their security deposit after consideration of the landlords' application.

I allow the tenant recovery of their filing fee of \$50.00 paid for this application, pursuant to section 72(1) of the Act.

Landlord's application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

Cabinetry repair-Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

The landlords confirmed that the cabinetry has not been repaired as of the date of the hearing. After two subsequent sets of tenants have resided the rental unit since this tenancy ended, I find there is no reasonable expectation that the landlords will ever incur a loss for cabinetry repair. I also find that the matter of the delaminated cupboards was mentioned on the move-in condition inspection report, and that any further damage, if any, was a matter of reasonable wear and tear. I therefore dismiss this claim, without leave to reapply.

Locksmith charges-I find the landlords have presented no basis for this claim, as the keys were returned to the landlords, as noted on the move-in condition inspection report, and after two subsequent sets of tenants have resided the rental unit, the locks have not been changed. I find this part of the landlords' application is frivolous and an

abuse of the dispute resolution process under section 62(4) of the Act, and it is dismissed, without leave to reapply.

Carpet cleaner purchase-I find the tenants are not responsible for the purchase of cleaning equipment used in the landlords' business of renting a property. I also reviewed the move-out condition inspection report and note that there were no issues as to the floor, with all spaces marked with a "good", "fixed", or blank.

I dismiss this claim, without leave to reapply.

Replacement of door stopper-This item was not listed on the move-out condition inspection report and as such, I find the landlords submitted insufficient evidence to support this claim. I dismiss the landlords' claim for a replacement door stopper, without leave to reapply.

Strata fee (1) & (2)-As to the move-out fee for this tenancy, I find the landlords submitted insufficient evidence that the tenants signed a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenants, renting within a strata development, have received a copy of the strata bylaws and agree to abide by them. Without the form being signed by the tenants, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenants are not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act. Additionally, I find the landlords submitted insufficient evidence that the strata actually charged a move-out fee.

As to the move-in and move-out fee for the subsequent set of tenants and the move-in fee for the 2nd subsequent set of tenants, as this claim pertains to tenancies unrelated to this tenancy, I find this part of the landlords' application is frivolous and an abuse of the dispute resolution process under section 62(4) of the Act, and it is dismissed, without leave to reapply.

Cancelled cheque fee-I accept the tenants' evidence that the landlords were made aware that the previously issued, post-dated cheques to the landlords were no longer valid. I therefore find that it was the landlords' choice to deposit the cheque and I therefore dismiss this claim, without leave to reapply.

Unpaid rent, Dec. '14-As to the landlords' claim for loss of revenue, incorrectly called unpaid rent as the tenancy was over when the tenants vacated the rental unit, Section 45 (1) of the Act requires a tenant to give written notice to end the month-to-month tenancy at least one clear calendar month before the next rent payment.

In the case before me, although the evidence shows that the tenants provided written notice on November 9, 2014, I find this is insufficient notice under the Act to end the tenancy at the end of November.

It is apparent the landlords took reasonable steps to minimize their loss, as required, as the evidence reflects that new tenants moved into the rental unit on December 7, 2014. I therefore find the landlords are entitled to a monetary award for loss of rent revenue for December 1-6, or in the amount of \$276.18 ($\1400.00 monthly rent x 12 months per year = $\$16,800.00 \div 365$ days per year = $\$46.03$ daily rate x 6 days).

Late rent, app fee-I find the landlords submitted insufficient evidence to explain this claim and it is dismissed, without leave to reapply.

Cleaning supplies-In reviewing the condition inspection report, I find that the rental unit was left at least reasonably clean by the tenants, as was their requirement under the Act. This claim is dismissed, without leave to reapply.

Various gas receipts, Nov. 23, airline travel, fuel for rental car-As to the landlords' request for travel expenses, I find that the landlords have chosen to incur costs that cannot be assumed by the tenants. I do not find the tenants to be responsible for the landlords choosing to rent a property in another town apart from where the landlords reside. The landlords have a choice of appointing an agent in the same town as the rental unit to conduct their business. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlords' business, such as traveling to the rental unit. Therefore, I find that the landlords are not entitled to travel costs, as they are costs which are not named by the Act. I therefore dismiss the landlords' claim for fuel and travel costs.

Fuel for travel, April '15-As this claim relates to the landlords' travel expenses to meet with a 2nd subsequent set of tenants, which is unrelated to this tenancy, I find this part of the landlords' application is frivolous and an abuse of the dispute resolution process under section 62(4) of the Act, and it is dismissed, without leave to reapply.

Priority and registered mail costs-I find that the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee or for choices made by the landlords in communicating with the tenants. This claim is dismissed, without leave to reapply.

As I have found parts of the landlords' application frivolous, I decline to award them recovery of their filing fee.

Both applications-

The tenants have been granted a monetary award of \$50.00 for recovery of their filing fee.

The landlords have been granted a monetary award of \$276.18 for loss of rent revenue.

I deduct the tenants' monetary award of \$50.00 from the landlords' monetary award of \$276.18, leaving the landlords with a total monetary award of \$226.18.

I direct the landlords to deduct the amount of \$226.18 from the tenants' security deposit of \$700.00, and order that they return the balance of \$473.82.

To give effect to this order, I grant the tenants a monetary order for \$473.82, pursuant to sections 62(2) and 67 of the Act and it is enclosed with their Decision.

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

Conclusion

The tenants are granted a monetary award of \$50.00 for recovery of their filing fee. The landlords are granted a monetary award of \$276.18. These two amounts were offset, leaving a total monetary award being granted to the landlords in the amount of \$226.18.

The landlords were ordered to deduct their total monetary award from the tenants' security deposit and the tenants were granted a monetary order for the remainder.

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 17, 2015

Residential Tenancy Branch

