



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 landlords: MNSD, MNDC, MND, FF

Introduction

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

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

The landlords applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and alleged damage to the rental unit, and for recovery of the filing fee paid for their application.

The tenant and the landlords attended the hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receiving the other's evidence and neither party raised any concerns or issues regarding service of the applications or evidence.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant documentary and photographic evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral, written, and photographic 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. Is the tenant entitled to a return of his security deposit, further monetary compensation comprised of double the deposit, and to recovery of the filing fee paid for this application?
2. Are the landlords entitled to monetary compensation from the tenant and to recovery of the filing fee paid for this application?

Background and Evidence

The tenancy agreement submitted by the landlords shows that this tenancy began on January 15, 2013, monthly rent was \$820.00, and the tenant paid a security deposit of \$410.00 each. The undisputed evidence shows that the tenancy ended on January 31, 2015 and that the landlords have not returned the tenant's security deposit.

Tenants' application-

The tenants' monetary claim is in the amount of \$820.00, comprised of his security deposit of \$410.00, doubled and additionally for recovery of the filing fee paid for this application.

The tenant submitted that he provided the landlord with his written forwarding address on March 27, 2015, by regular mail, and that the landlord has not returned any portion of his security deposit.

Landlord's response-

The landlord confirmed receipt of the tenant's forwarding address by mail. The landlord submitted that the tenant agreed to pay for carpet cleaning.

The landlords filed their application claiming against the tenant's security deposit on September 18, 2015.

Landlords' application-

The landlords' monetary claim was as follows:

Carpet cleaning	\$80.00
Suite cleaning	\$360.00
Loss of revenue, February 2015	\$810.00
Claim for rent for February 2015	\$810.00
Filing fee	\$50.00

The landlords' additional evidence included an invoice for suite cleaning from an individual listed by his first name, a carpet cleaning invoice, an unsigned condition inspection report, a written statement of claim, and photographs said to be of the rental unit.

In support of their application as to the carpet cleaning and suite cleaning, the landlords submitted that when they went to the rental unit at the end of the tenancy, the tenant was in a hurry that day; however, the rental unit was too dirty to inspect, in any case, on that day and it was not prudent to have the tenant sign the move-out inspection report. According to the landlords, the tenant agreed to pay for a service to clean the rental unit.

The landlord submitted further that the tenant was not present when the move-out inspection actually took place and that the photographs of the rental unit were taken 2-3 days later, in the presence of another person.

As to the move-in condition inspection report, the landlords submitted that they left the inspection report in the rental unit at the beginning of the tenancy in order for the tenant to inspect the premises himself.

The landlords referred to their photographs as to the condition of the rental unit left by the tenant.

As to the landlords' claim for the rent for February 2015, the landlords submitted that there was mould in the rental unit and that the suite required vacancy in order to properly clean, as the tenant failed to clean the rental unit.

As to the landlords' claim for loss of rent revenue, again for February 2015, the landlords submitted that they are entitled to receive this amount as the tenant's notice to vacate by January 31, 2015, was not delivered until January 2, 2015.

The landlords stated that they did attempt to advertise the rental unit on the free online websites for about a week after receiving the tenant's notice, for an availability of March

1, 2015. The landlords submitted further that they took the ad down as the rental unit was in no condition to rent.

Tenants' response-

The tenant submitted that the rental unit there was no move-in inspection, and that he just walked through the rental unit by himself at the start of the tenancy. The tenant submitted further that there was a move-out inspection, but that no one said anything about damages. The tenant submitted further that he did sign the move-out inspection report, but that was not his signature on the landlords' copy of the report entered into evidence. I note that the condition inspection report submitted by the landlords did not have a signature by either party on the move-in or move-out portion of the report and it was not clear what signature to which the tenant referred.

The tenant submitted that he did not understand why the landlords are claiming for carpet cleaning, as he did clean the carpet. As to the photographs, the tenant stated he did not know what was underneath the carpets, as shown by the landlords, as he never pulled the carpet to look underneath.

The tenant submitted further that he spent many hours in cleaning the rental unit, particularly the bathroom and kitchen. The tenant agreed that he did not clean out the refrigerator due to time constraints. The tenant submitted further that the rental unit was very old and had mould from the beginning of the tenancy.

The tenant submitted that the landlord said her cleaning standards were higher than the Residential Tenancy Branch's standards.

Analysis

Tenant's application-

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 claiming against the deposit within 15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy.

In this case, the undisputed evidence of the parties shows that the tenancy ended on January 31, 2015 and that the tenant provided his written forwarding address in a letter sent by regular mail on March 27, 2015. The landlords confirmed receipt of the tenant's written forwarding address in that letter.

Section 90 of the Act states that documents served by mail are deemed delivered 5 days later. Thus the landlords were deemed to have received the tenant's letter by April 1, 2015.

Therefore the landlords had until April 16, 2015 to return the tenant's security deposit in full or file an application claiming against the tenant's security deposit. Instead, the landlords' application was filed September 18, 2015.

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 amount of their security deposit.

I therefore grant the tenant's application for dispute resolution and, pursuant to section 62(3) of the Act, order that the landlord pay the tenant double his security deposit of \$410.00.

Due to the above and pursuant to section 67 of the Act, I find the tenant is entitled to a total monetary award of \$870.00, comprised of his security deposit of \$410.00, doubled to \$820.00, and \$50.00 for recovery of his filing fee of \$50.00.

Landlords' 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 that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Cleaning and loss of rent revenue due to cleaning/state of the rental unit-

Pursuant to sections 23 and 35 of the Act, the landlord and tenant must inspect the rental unit together at the beginning and end of a tenancy and the landlord is required to complete a condition inspection report in both circumstances in accordance with the Residential Tenancy Regulation.

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.

In this case, I find the undisputed evidence shows that the landlords failed to comply with their obligation under the Act in arranging for both a move-in inspection and preparing the condition inspection report. Additionally, Section 35(2) of the Act requires that the landlord offer the tenant 2 opportunities, as prescribed, for the inspection of the rental unit at the end of the tenancy. In this case, the landlords failed to submit evidence that they offered such opportunities to the tenant at the end of the tenancy.

As to the landlords' claim that the tenant failed to properly clean the rental unit and that he damaged the rental unit or carpet, I find that a key factor in establishing a claim for damage by the tenant to building elements or for cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. In this case, there was no such record as the landlords failed to conduct the inspection with the tenant and complete an inspection report. Additionally, there was no other independent evidence of the state of the rental unit from the beginning of the tenancy.

I also find that I could not rely on the move-out condition inspection report, as the landlords failed to provide evidence that they gave the tenant 2 opportunities to inspect the rental unit and the tenant was not there for the inspection. Further the landlords supplied inconsistent evidence as their inspection report lists a move-out inspection date of January 31, 2015; yet their documentary evidence shows they performed an inspection on February 2, 2015, outside the presence of the tenant and when the photographs were supposedly taken.

In the circumstances before me, as I have previously found that the landlords failed to meet their obligation under of the Act of conducting a move-in inspection with the tenant and completing the inspection reports, I find this failure results in the landlords being unable to submit sufficient evidence to show the condition of the rental unit either at the beginning of the tenancy or at the end. The landlords also failed to produce any other independent records showing the state of the rental unit at the start and end of the tenancy, and I find I could not rely upon the authenticity of their photographs as the tenant was not present and there was no other independent proof of when the photographs were taken.

In the absence of any such evidence, I find the landlords have not met their burden of proof on the balance of probabilities that the tenant caused damage to the rental unit or

left the rental unit unreasonably clean. Due to their insufficient evidence, I therefore dismiss the claim of the landlords for carpet cleaning, suite cleaning and loss of rent revenue due to the state of the rental unit, other than a small fee for cleaning the refrigerator, as the tenant agreed that it was not cleaned out. I find a reasonable amount under the circumstances is \$50.00.

Loss of rent revenue due to insufficient notice by the tenant-

In the hearing, the landlords submitted that it was not their intention to claim a double amount of loss of rent revenue for February; however, that was the case here.

Section 45(1) of the Act requires a tenant to give written notice to end the tenancy at least one clear calendar month before the next rent payment is due.

I accept that the tenant failed to provide sufficient notice to end the tenancy, by his failure to give notice to the landlords by December 31, 2015, of his intent to end the tenancy by January 31, 2015. However, a landlord is required under the Act to take reasonable steps to minimize their loss.

In this case, the landlords failed to provide evidence that they made attempts to re-rent the rental unit for February 1, 2015, as they failed to provide proof of the advertisements. Without this proof, I was unable to review the advertisements for frequency and content, such as the monthly rent, and the landlords confirmed that the ads were only online for 1 week and for an effective move-in date of March 1, 2015.

I also find the landlords submitted insufficient evidence to prove that a notice served by the tenant 2 days after the required time caused them to suffer a loss of rent revenue for February.

Due to the above, as I have found that the landlords submitted insufficient evidence that they took reasonable steps to minimize their loss for February 2015, I dismiss their additional claim of \$820.00.

As I have granted the landlords a monetary award for only a small portion of their claim, I award the landlords recovery of a small portion of their filing fee, or \$20.00.

Due to the above and pursuant to section 67 of the Act, I find the landlords are entitled to a total monetary award of \$70.00, comprised of costs of cleaning the refrigerator of \$50.00 and \$20.00 for a partial recovery of their filing fee of \$50.00.

Both applications-

The tenant has been granted a monetary award of \$870.00.

The landlords have been granted a monetary award of \$70.00.

I offset the landlords' monetary award of \$70.00 from the tenant's monetary award of \$870.00, and order that the landlords pay the tenant the amount of the balance due in the amount of \$800.00. In that respect, the tenant is granted a monetary order pursuant to section 67 of the Act in the amount of \$800.00 and it is enclosed with his Decision.

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

Conclusion

The tenant's application is granted and he is granted a monetary award of \$870.00.

The landlords' application is granted in small part and they are granted a monetary award of \$75.00.

I offset the landlords' monetary award from the tenant's monetary award, and granted the tenant a monetary order for the balance due in the amount of \$800.00.

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 26, 2015

Residential Tenancy Branch

