



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On June 25, 2015 the Tenants filed an Application for Dispute Resolution, in which the Tenants applied for the return of their security deposit, to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary Order is an undisclosed amount, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the male Tenant withdrew all of the Tenants' applications, with the exception of the application to recover the security deposit and the filing fee.

The male Tenant stated that on June 25, 2015 or June 26, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents that Tenants submitted to the Residential Tenancy Branch on June 25, 2015 were served to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On July 07, 2015 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on July 09, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents that Landlord submitted to the Residential Tenancy Branch on July 14, 2015 were served to both Tenants, via registered mail. The male Tenant acknowledged that both parties received these documents and they were accepted as evidence for these proceedings.

The male Tenant stated that he is representing both Tenants at these proceedings. The parties present at the hearing were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit?

Is the Landlord entitled to retain all or part of the security deposit or should it be returned to the Tenants?

Background and Evidence

The Landlord and the male Tenant agree that:

- this tenancy began on August 01, 2014;
- the Tenants agreed to pay rent of \$1,100.00 by the first day of each month;
- the Tenants paid a security deposit of \$550.00;
- the Landlord did not schedule a time to complete a condition inspection report at the start of the tenancy;
- a condition inspection report was not completed at the start of the tenancy;
- the tenancy ended on May 31, 2015;
- the Tenants provided a forwarding address to the Landlord, via email, on June 07, 2015; and
- the Tenants provided the Landlord with their forwarding address when they mailed the Application for Dispute Resolution to her in June of 2015.

The Tenants submitted a series of emails exchanged between the parties between April 31, 2015 and June 07, 2015, which includes the email in which the Tenants provided their forwarding address.

The Landlord is seeking compensation, in the amount of \$437.85, for removing personal property from the rental unit. The Landlord submitted an invoice to show this expense was incurred. She stated that this expense was only for removing personal items/garbage left behind by the Tenants.

The Landlord stated that a variety of personal items and garbage was left outside of the rental unit, including a large dog house, a broken dresser, a broken crib, and miscellaneous garbage. The Landlord submitted several photographs of the items left in the yard at the end of the tenancy, which she stated were not there at the start of the tenancy.

The male Tenant stated that all of the garbage/personal items seen in the photographs were outside the rental unit at the start of the tenancy, with the exception of the dog house.

The Landlord submitted an email, dated May 02, 2015, in which she mentions there is a lot of garbage outside the rental unit, including couches and televisions.

The Tenants submitted an email, dated May 21, 2015, in which the Tenants declare that “every thing around the yard couches etc and side of house will be gone as well”. (sic)

The Tenant submitted an email, dated June 07, 2015, in which the Landlord mentions the dresser and the dog house left outside. The Tenants respond to this email on June 07, 2015 but do not dispute that they left the dog house or the dresser.

The Landlord is seeking compensation, in the amount of \$100.00, for cleaning the rental unit. The Landlord stated that she spent eight hours cleaning the unit and she paid \$100.00 in cash to an individual who helped her clean the unit. The Landlord submitted several photographs of the rental unit which she contends represent the type of cleaning required at the end of the tenancy.

The male Tenant stated that although the photographs are of the rental unit he believes they have somehow been “manipulated” as they do not reflect the condition of the rental unit at the end of the tenancy. He stated the unit was clean at the end of the tenancy.

The Landlord is seeking compensation, in the amount of \$60.00, for repairing several shingles that were missing from the side of the rental unit. The Landlord stated that she paid \$60.00 in cash to an individual who repaired the shingles.

The Landlord stated that she believes the Tenants’ dog chewed shingles. The Landlord submitted a photographs of some damaged shingles which she believes show that a dog has chewed the shingles.

The male Tenant stated that the shingles were damaged by many storms.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

I favour the evidence of the Landlord, who contends that the Tenants left a lot of garbage left outside of the rental unit, over the evidence of the Tenants, who contend that all of the garbage seen in the photographs was present at the start of the tenancy, with the exception of the dog house.

In reaching this conclusion I was heavily influenced by the series of emails that were exchanged between the parties. I find the emails serve to corroborate the Landlord’s claim because:

- I find it unlikely that the Landlord would be asking the Tenants to remove garbage from outside the rental unit if it had been present at the start of the tenancy;
- I find it even more unlikely that the Tenants would not have responded to this request by advising the Landlord the garbage was not theirs if the garbage had been present at the start of the tenancy;
- I find it highly unlikely that the Tenants would have told the Landlord that “every thing around the yard couches etc and side of house will be gone” if the garbage around the side of the house did not belong to the Tenants; and
- I find it reasonable to conclude that the Tenants would have responded to the Landlord’s email of June 07, 2015 by informing her that the dresser in the yard did not belong to them.

I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not removed the garbage from the yard of the rental unit. I therefore find that the Landlord is entitled to recover the cost of removing the garbage, which was \$437.85.

On the basis of the testimony of the Landlord and the photographs submitted in evidence, I find that the Tenants failed to comply with section 37(2) of the *Act* when they did not leave the rental unit in reasonably clean condition. I find that the Tenants submission that the photographs have been “manipulated” is entirely unsubstantiated and I find the photographs likely represent the condition of the rental unit at the end of the tenancy. I therefore find that the Landlord is entitled to \$100.00 in compensation for the time she spent cleaning the unit.

I find that the Landlord has submitted insufficient evidence that the shingles on the side of the house were damaged by the Tenant’s dog. I therefore dismiss the Landlord’s claim for compensation for repairing the shingles.

In determining that there is insufficient evidence that a dog damaged the shingles I carefully viewed the photographs of the shingles and I am unable to conclude that they have been chewed by a dog.

Section 24(2) of the *Act* stipulates that a landlord’s right to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant at least two opportunities to inspect the rental unit at the start of the tenancy. As the Landlord did not attempt to schedule an inspection of the rental unit at the start of the tenancy, I find that her right to claim against the security deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant’s forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord’s right to claim against the security

deposit has been extinguished, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

I find that the both Applications for Dispute Resolution have merit and that both parties are responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$537.85, in compensation for cleaning the unit and removing garbage and other personal items. The Tenants have established a monetary claim, in the amount of \$1,100.00, which is double the security deposit.

After offsetting the two claims I find the Tenants are entitled to a monetary Order of \$562.15 and I grant the Tenants a monetary Order for that amount. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province 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: December 06, 2015

Residential Tenancy Branch

