



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNSD OLC MNSD MNDC

Introduction

This hearing dealt with (a) an application by the tenant for return of double the security deposit; and (b) an application by the landlord for a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. Both parties have requested recovery of the filing fee against the other. Both parties attended the hearing and had an opportunity to be heard.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began originally under a first lease that ran from December 1, 2013 to September 30, 2014 and then continued under a second lease which commenced on October 1, 2014 and was to run for 14 months until November 30, 2015. The rent was \$1275.00 per month. A security deposit of \$640.00 was paid by the tenants at the start of the original tenancy agreement.

On June 25, 2015 the tenants gave the landlord written notice that they would want to terminate the tenancy effective July 31, 2015 prior to the end of the fixed term.

The tenants vacated the rental unit on July 31st. Also on July 31, 2015 the tenants gave the landlord their forwarding address in writing and requested return of the security deposit in full within 15 days. The tenants have not yet received back any of their security deposit. The tenants never gave the landlord written authorization to retain any of their security deposit.

A move-in condition inspection report was done at the start of the tenancy and another completed at the end of the tenancy on July 31, 2015. The tenants claim that the landlord did not properly complete the move out report in their presence but rather just walked through the unit with them and apparently told them that there “was no damage” to the unit but that the unit was not properly cleaned and that they would be charged for travel expenses.

The tenants filed their application on August 10, 2015 and the landlord filed their application on August 13, 2015.

Analysis – Landlord’s Claim

The landlord has made a monetary claim against the tenant comprised of the following items:

Travel Expenses (Ferry/Gas)	\$817.83
Cleaning Supplies	\$676.94
Molly Maid	\$192.50
Changing Locks	\$115.08
TOTAL	\$1,494.77

I shall deal with each claim in turn.

Travel Expenses \$817.83 – The landlord lives in Victoria and the residential property is located in Surrey. As a result, travel to and from the property takes time and costs money, namely ferry fares and gas. The landlord has asserted this claim on the basis that the tenant broke a fixed term lease – twice, in fact – and the landlord claims to have incurred travel expenses both times that the lease was broken. For their part, the tenants dispute this portion of the landlord’s claim on the basis that it should not be a liability for the tenant in terms of where the landlord resides. Further the tenant claims they never asked the landlord to come over from the island in February – which is one of the times for which the landlord has claimed ferry travel.

While I understand the landlord’s frustration at having to spend so much money at a time when they thought the tenancy was set and ‘off the list’ for a period of time due to it

being a fixed term, I am not satisfied that the tenant can be held responsible for these expenses. When a landlord chooses to run a rental property from a geographical distance, travel to and from becomes part of their business expenses and cannot, in my view, be assigned to the tenant. **As a result, this portion of the landlord's claim is dismissed.**

Cleaning Supplies (\$396.36) – The landlord submitted receipts and photographs as well as the move-out inspection report to support its claim for cleaning supplies. The receipts submitted were from Rona, Home Depot, Dollar Tree and Walmart. At the hearing, the tenant pointed out that the receipt from Dollar Tree included chocolate bars and candy. The tenant also noted that one of the Walmart receipts contained a \$30.21 charge for a step stool for which they do not believe they should be responsible. The landlord responded that they needed the stool to clean the walls which the tenants were supposed to have cleaned. The tenants also claimed that they never used the oven and that they do not think it fair that they should have to pay for oven cleaning materials.

In my view, given the fact that the tenants did not leave the unit as clean as it should have been but also given the fact that the landlord charged for some items such as food and perhaps some other items such as a measuring tape, seambinder, stool and so on that will have uses beyond the immediate clean-up of this unit, **I find that the fair resolution to this claim is that the landlord receive half of the amount claimed in the amount of \$198.18.**

Molly Maid (\$192.50) - The landlord claims that although the tenants had done some cleaning at the end of the tenancy, it was their opinion that it was 'just not up to standard' and had to be cleaned further to make it ready for the new tenants. To this end, the landlord hired Molly Maid to come in and do a final cleaning. In reviewing the photos submitted by the landlord, I agree that the rental unit was not left as clean as it should have been. Section 37 requires that the tenant leave the unit "reasonably clean and undamaged except normal wear and tear." Residential Tenancy Policy Guideline No. 1 then goes on to assign responsibilities to each of the parties for who has to do what at the beginning and end of tenancies. Looking at both of these provisions, **I find that the tenants are liable for the Molly Maid cleaning fee of \$192.50.**

Lock Change (\$115.08) – The landlord claims that the new tenants wanted new locks installed at the rental unit and the landlord believes that this cost should be borne by the outgoing tenants. I have reviewed the provision of Residential Tenancy Policy Guideline No. 1 and the Act and I cannot find any reference to the outgoing tenant being responsible for this cost. The answer might be different if the outgoing tenants had kept

all the keys but I do not believe this to be the situation in this case. **As a result, I dismiss this portion of the landlord's claim.**

Analysis – Tenants' Claim

The tenants have made a monetary claim against the landlord in the amount of \$1280.00 which represents double the amount of the tenants' security deposit. The tenants make this claim pursuant to Section 38(1) of the *Act* says 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 do one of the following:

- repay any security deposit or pet damage deposit to the tenant with interest; or
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) then goes on to say that if a landlord does not comply with the above, the landlord may not make a claim against the deposit(s) and **must pay the tenant double** the amount of the security deposit, pet damage deposit, or both, as applicable.

In the present case, the landlord has not returned the tenant's security deposit but did file a claim against the deposit on August 13, 2015 which was within the 15 day time limit stipulated in Section 38. As a result, I find that the tenants have not established a claim for double the security deposit.

However, I am left with the fact that the landlord is still holding the tenants' security deposit in the sum of \$640.00 and the tenants have argued that the landlord is not entitled to retain any of it due to the landlord's failure to properly complete the move-out condition inspection report.

In this regard I refer to Section 38(5) which says that the right of a landlord to retain all or part of a security deposit does not apply if the liability of the tenant is in relation to **damage** (emphasis added) and the landlord's right to claim for damage against a security deposit has been extinguished under Section 36(2) *[landlord failure to meet end of tenancy condition report requirements]*.

In the present case the landlord's claim against the deposit is not for damage but rather for cleaning and cleaning supplies. The landlord also claimed for travel expenses and lock change but I have denied these claims.

I have found that the landlord has established a total claim against the tenants in the amount of \$390.68. When this amount is subtracted from the tenants' security deposit, **there is a balance owing to the tenants in the amount of \$249.32.**

Conclusion

I have found that the landlord has established a monetary claim against the tenants in the amount of \$390.68. The landlord currently holds the tenants' security deposit in the amount of \$640.00. I therefore order the landlord to retain \$390.68 from the security deposit and forward the balance of \$249.32 immediately to the tenants.

The tenants' application for double the security deposit is dismissed.

Given that neither party in this matter was fully successful in their claims, I dismiss the requests of both parties to recover their filing fees from each other.

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: January 12, 2016

Residential Tenancy Branch

