



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD, MNDC, FF

For the landlords – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order to recover double the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order permitting the landlords to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords permitted to keep part of the security deposit?
Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this month to month tenancy started on March 01, 2015. Rent for this unit was \$1,300.00 per month due on the 1st of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy. The tenancy ended on July 31, 2015.

The tenants testified that the landlord was provided the tenants forwarding address by email on August 02, 2015. The landlord returned the amount of \$500.00 to the tenants on August 26, 2015 at the address provided. The tenants testified that the landlords did not conduct a move in or a move out condition inspection of the unit at the start or end of the tenancy. The landlords were not around when the tenants moved into the unit and would have no idea of the condition of the unit at the start of the tenancy.

The tenants testified that they have not given the landlords permission to keep part of their security deposit and as the landlords did not return the deposit in full or apply to keep it within 15 days of the end of the tenancy. The tenants seek to recover double the security deposit less the amount already returned. The tenants also seek to recover their filing fee of \$50.00.

The landlords testified that when they arrived at the unit after the tenants had vacated they found the unit was not left in a reasonably clean condition. The landlords testified that they know the unit was clean at the start of the tenancy as the landlord's mother-in-law who is living upstairs saw the condition of the unit prior to the tenants moving in. The landlords were arranging their wedding on the property and had to engage the services of a cleaner to come in at short notice to clean the unit. The landlords referred to the letter provided by the cleaner in documentary evidence which states the cleaner found the unit filthy and provided some examples of areas cleaned such as hair from the shower drain, dirty fridge, microwave, countertops, cupboards and floors in the kitchen, windows, sliding glass doors and window sills, all floors needed to be vacuumed and washed and some walls needed spot cleaning. The cleaner has written that she spent five hours cleaning at a cost of \$20.00 per hours. The landlords testified that they deducted the cost of this work from the security deposit.

The landlords testified that there was a table in the unit that belonged to the landlords. At the end of the tenancy this table top was found to have been damaged by water from the tenants' plant pots. The landlords referred to their photographic evidence showing damage to the table top and a letter written by the landlord's mother-in-law who lives in the unit above who witnessed the tenants putting plant pots on the table. The landlords seek to recover \$50.00 in compensation for the damage to the table.

The landlords seek an Order permitting them to keep \$150.00 of the security deposit.

The tenants testified that when they moved into the unit it was moderately clean but had not been professional cleaned. There was also some garbage in the unit and some of the landlords' furniture. The tenants testified that when they vacated the unit they spent two days cleaning and the unit was left reasonable clean and certainly in a cleaner condition than when they moved into the unit.

The tenants testified that the table top was already damaged with water stains when they moved into the unit.

The landlord disputed the tenants' claims. The landlord testified that the shower drain was full of long hair, the baseboards were dirty and the kitchen island still had some sort of spaghetti sauce on it. The landlord testified that she has sat at the table in the unit prior to this tenancy many times and there was no water damage prior to this tenancy. The landlord's mother-in-law had seen plant pots on the table and expressed her concerns to the landlords.

Analysis

Section 38(1) of the *Residential Tenancy Act (Act)* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants' forwarding address in writing to either return the security deposit to the tenants or make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenants to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlords must pay double the amount of the security deposit to the tenants.

Sections 23(1) and 23(4) of the *Act* require a landlord to do a move in condition inspection of the unit with the tenants, to complete a condition inspection report and to provide a copy of it to the tenants even if the tenants refuse to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection and a report when the tenants moved in, I find the landlords contravened s. 23 of the *Act*. Consequently, s. 24(2) of the *Act* says that the landlords' right to claim against the security deposit for damages is extinguished.

When a landlords' right to claim against the security deposit has been extinguished the landlords must return the security deposit to the tenants within 15 days of either the end of the tenancy or the date the tenants give the landlords their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlords did receive the tenants' forwarding address on August 02, 2015. Although email is not normally a recognized method to provide a forwarding address; as the landlords responded to the email and forwarded part of the security deposit to the tenants at that address I will accept that the forwarding address was provided in writing for the purposes of the *Act*. As a result, the landlords had until August 17, 2015 to return all of the tenants' security deposit. As the landlords failed to do so, the tenants have established a claim for the return of double the security deposit to an amount of **\$1,300.00**, pursuant to section 38(6)(b) of the *Act*. There has been no accrued interest on the security deposit for the term of the tenancy.

With regard to the landlords' claim for money owed or compensation for damage or loss; the landlords have the burden of proof in this matter to show the unit was clean at the start of the tenancy and was not left reasonable clean at the end of the tenancy. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord has provided evidence in the form of two letters one from the cleaner and one from the landlord's mother-in-law attesting that the unit was not left reasonable clean at the end of the tenancy; however, without a move in condition inspection report to show the unit was clean at the start of the tenancy, the landlords have failed to meet the burden of proof that they provided a clean unit when the tenants took possession of the unit. Consequently, I am not prepared to award the landlords \$100.00 to have the unit cleaned.

With regard to the table top; the landlords have the burden of proof to show this table was damaged during the tenancy through the tenants' actions or neglect. The landlord testified that the table was in a good condition and the tenants testified it was already damaged when they moved in. Without further evidence such as a move in condition inspection report then I must find that both parties version of events is equally probable and therefore the landlords have not met the burden of proof.

As the tenants' claim has merit I find the tenants are entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants for the following amount:

Double the security deposit	\$1,300.00
Less amount already returned	(-\$500.00)
Filing fee	\$50.00
Total amount due to the tenants	\$850.00

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for \$850.00. The Order must be served on the landlords. Should the landlords fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: March 01, 2016

Residential Tenancy Branch

