



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Tenants' Application for Dispute Resolution wherein they sought a Monetary Order pursuant to sections 38, 67 and 72 of the *Residential Tenancy Act* for return of their security deposit and the rent paid for August 2015 and recovery of the filing fee.

Both parties appeared at the hearing. The Landlord was assisted by her daughter J.S. and the Tenants were represented by their daughter, C.C. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlords including return of their security deposit, return of the rent paid for August 2015 and recovery of the filing fee?

Background and Evidence

The Tenant's daughter, C.C. testified on behalf of the Tenants.

C.C. testified that the tenancy began August 6, 2015. She further stated that when they first viewed the rental unit it was under renovations which were supposed to be done by the time the tenancy began on August 1, 2015. The Tenants were given keys to the rental unit July 27, 2015 to allow the Tenant, S.C., to paint the rental unit.

C.C. stated that the renovations were not completed by August 1, 2015 and the Landlord then promised that the house would be done by August 8, 2015.

C.C. stated that they moved their boxes in on August 6, 2015 as they had to move out of their previous accommodation. She said that the Landlords tried to clean up, but it was not done. C.C. stated that the back yard was full of garbage and yard waste, the stairs were not attached to the deck, the walls were not painted, and the rental unit was not clean.

On August 8, 2015 the Tenants realized that the house did not have hot water. C.C. stated her sister, M.C., called the Landlord, J.S., about the hot water and J.S. said she had recently showered in the rental unit such that she believed the hot water was available. C.C. stated that bathroom upstairs was full of paint supplies, bugs, etc. and it was unlikely that the shower had been recently used as claimed by the Landlord.

C.C. said that they then called the gas company who informed the Tenants that the gas hot water tank had not been used in years, and that it was dangerous due to three potential gas leaks.

C.C. said that they were in occupation for seven days and vacated the rental unit August 15, 2015.

Introduced in evidence by the Tenants were photos of the rental unit which depicted the following:

- an unclean shower and bath tub unit with obvious staining, and discoloured sealant;
- an unclean oven;
- mold on the main bathroom shower;
- incomplete flooring in the bathroom closet, damaged walls and missing baseboard;
- the interior of a cabinet showing the kitchen plumbing as well as a stained, moldy and cracked wall which is held together by duct tape;

- the interior of a cabinet which is significantly stained with what the Tenants have identified as mold;
- a gas hot water tank which the Tenants claim was not operational for three years;
- the back yard with significant debris and waste, including the back stairs which are seen lying on black plastic, a tree has been cut down and cut into rounds,

C.C. further stated that on August 10, 2015 the Tenants told the Landlords that the rental unit was not safe and that they wanted to vacate the rental unit as of August 15, 2015. C.C. said that at this time she asked for the return of the security deposit and return of the rent paid for August 2015. She claimed that the Landlords agreed to this request and asked to meet on August 16, 2015 to return the requested funds.

C.C. testified that she met with the Landlords on August 16, 2015 with her friend S.S. She said that at this time, the Landlord agreed they could move out but told them they had not given sufficient notice, and as such the Landlords would not return the August rent. C.C. confirmed that the Landlords also did not return their security deposit as agreed.

C.C. testified that she then spoke to the Residential Tenancy Branch and was informed they needed to provide the Landlords with written notice of their forwarding address. She says that on August 25, 2015 the Tenants sent their forwarding address and both sets of keys to the Landlords. Introduced in evidence was a receipt and mailing history for this letter which confirmed the letter was sent on August 25, 2015 and received on August 27, 2015.

C.C. testified that the Landlord failed to do a move in or move out condition inspection report.

The Landlords' daughter, J.S., (hereinafter referred to as J.S.) testified on behalf of the Landlords as well as providing translation services for her mother, J.S. (hereinafter referred to as the "Landlord"). J.S. confirmed that the monthly rent was \$1,800.00 and the Tenants paid a security deposit of \$900.00. Introduced in evidence was a copy of the cheques written by the Tenants for the August rent, as well as the security deposit in these amounts.

J.S. stated that the Landlord did an informal "walk through" at the start of the tenancy. J.S. confirmed however that the Landlords failed to perform a move in condition inspection report in accordance with the *Residential Tenancy Act* and the regulations.

In response to the Tenants' claims that the rental unit was not livable, J.S. stated that she had renovated the entire house and it was completely finished when the tenancy began and was in fact livable. She further stated that the rental unit was ready by August 1, 2015, not August 8, 2015 as claimed by the Tenants.

J.S. and the Landlord denied that there was any agreement that the Tenants' rent would be returned for the month of August 2015.

J.S. testified that the Landlords did not know when the Tenants were moving out, and as such could not arrange a move out inspection. J.S. also claimed that when they tried to call the Tenants their call would go straight to voice mail as if their number had been blocked.

J.S. confirmed that she received the Tenants' forwarding address in writing as well as the keys for the rental unit on August 28, 2015. She further stated that the letter was dated August 17, 2015 yet the Tenants wrote that they last day would be in the rental unit was August 13, 2015.

J.S. stated that the house was completely painted when the tenancy began. She further stated that the Tenants did not like the colours and repainted some of the walls. She said the Tenant, S.C., made a huge mess when he painted because he painted over the trim and the door with the same colour. J.S. stated that the Tenants left the rental unit in a condition requiring cleaning. She stated however that the rental unit was re-rented immediately after the tenancy ended.

C.C. responded that the Landlords claims that the rental unit had been completely renovated were false. She reiterated that the photos depict the condition of the rental unit when they moved in.

Analysis

I will first deal with the Tenants' claim for return of double their security deposit.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,
- the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
- (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
- (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
- (a) the director has previously ordered the tenant to pay to the landlord, and
 - (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
- (a) 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, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.
- (6) If a landlord does not comply with subsection (1), the landlord
- (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlords could retain any portion of the security deposit. There was also no evidence to show that the Landlords had applied for arbitration, within 15 days of the end of the

tenancy or receipt of the forwarding address of the Tenant, to retain a portion of the security deposit as required by section 38(1).

By failing to perform incoming condition inspection reports the Landlords have also extinguished their right to claim against the security deposit, pursuant to section 24(2) of the *Act*.

If the Landlord believes they are entitled to monetary compensation from the Tenants', they must either obtain the Tenants' consent to such deductions, or obtain an Order from an Arbitrator authorizing them to retain a portion of the Tenant's security deposit. Here the Landlords did not have any authority under the *Act* to keep any portion of the security deposit.

Section 38(6) provides that if the Landlords do not comply with section 38(1), the Landlords must pay the Tenant double the amount of the security deposit. This section is mandatory. Having made the above findings, I must Order, pursuant to section 38 and 67 of the *Act*, that the Landlords pay the Tenant the sum of **\$1,800.00**, comprised of double the pet damage deposit and security deposit (\$900.00).

I will now deal with the Tenants' claim for return of the rent paid for August 2015.

The Tenants submit that they were not able to move into the rental unit until August 8, 2015 as the required repairs were not yet completed. They further submit that they then had to move in on August 8, 2015 as they had to leave their previous accommodation. The Landlords submit that they moved in on August 1, 2015 as agreed.

Introduced in evidence was a receipt in the amount of \$1,800.00, dated August 1, 2015 for rent, and a receipt in the amount of \$900.00 dated July 25, 2015 for the deposit.

I prefer the evidence of the Landlords that the tenancy began August 1, 2015. I am persuaded by the fact that the receipt for the rent paid was dated August 1, 2015 and was for the full monthly amount. I find it likely that had the parties agreed the tenancy would begin on August 8, 2015, that the Tenants would have paid a reduced amount. Accordingly, I find the tenancy began August 1, 2015.

The parties also disagreed as to when the tenancy ended. The Tenants submit that they vacated the rental unit on August 15, 2015. Their evidence was that they informed the Landlord on August 9 that they would be moving out by the 15th and that the Landlord, J.S. confirmed she would return the rent paid for August 2015.

I prefer the evidence of the Tenants over the evidence of the Landlords in terms of when the rental unit was vacated. I accept the Tenants evidence that the Tenants'

daughters C.C. and J.C. met with the Landlord J.S. and her niece, as well as two other men on August 16, 2015 after the rental unit had been vacated. I find it likely that had the rental unit not been vacated at that time, that the Landlord would have advised me that the Tenants belongings remained in the unit.

I further accept C.C.'s testimony that she met with the Landlord on April 16, 2015 to return the keys, go over the condition of the rental unit and to request return of the security deposit and the rent paid for August 2015.

The Landlords did not dispute the rental unit was vacated, nor did they dispute that this meeting occurred; the Landlords only submission in this regard was that adequate notice was not given.

While it is clear the Tenants' notice of August 9, 2015 does not satisfy the requirements set out in section 45 of the *Residential Tenancy Act*, it is notable that the Landlord conceded that the rental unit was rented immediately after the tenancy ended.

Accordingly, I find the Tenants are required to pay rent for time period from August 1, 2015 to August 15, 2015. As monthly rent was payable in the amount of \$1,800.00 and August has 31 days, the daily rental rate is \$58.06. Accordingly, I find the Tenants were obligated to pay the sum of \$870.90. As the Landlord has received the sum of \$1,800.00, the Landlords are to repay the Tenants the sum of **\$929.10**.

The Tenants, having been substantially successful, are also entitled to recovery of the filing fee paid in the amount of **\$50.00**.

In total, I award the Tenants the sum of **\$2,779.10** representing return of double their security deposit in the amount of \$1,800.00, \$929.10 for return of the rent paid for the balance of August and recovery of the \$50.00 filing fee. The Tenants are awarded a Monetary Order in this amount pursuant to sections 38, 67 and 72 of the *Residential Tenancy Act*. This Monetary Order must be served on the Landlords and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

The Landlords claimed the Tenants damaged the rental unit and that it required painting. The Landlords are not able to make a claim through the Tenants' application. If they wish to obtain monetary compensation from the Tenants they must make their own application for dispute resolution.

Conclusion

The Tenants are awarded a Monetary Order in the amount of **\$2,779.10** representing return of double their security deposit in the amount of \$1,800.00, \$929.10 for return of the rent paid for the balance of August and recovery of the \$50.00 filing fee.

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 16, 2016

Residential Tenancy Branch