



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover double the security deposit; for an Order to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

One of the tenants (KS), an agent for the landlord and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant 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 for money owed or compensation for damage or loss?
- Are the tenants entitled to recover the security deposit and should the doubling provision be applied?

- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this month to month tenancy started on January 01, 2015 and ended on October 04, 2015. Rent for this unit was \$600.00 per month due on the first of each month. The tenants paid a security deposit of \$300.00 on January 01, 2015. The tenants provided a forwarding address in writing on November 19, 2015 and this was sent to the landlord by registered mail.

The tenant testified that the tenancy agreement states that laundry is included in the rent. The tenants had access to a coin operated washer and dryer in a common laundry room shared with other tenants. Around the first week of June the washer stopped working and the landlord's agent was informed. The tenant testified that the washer was not repaired or replaced for the duration of their tenancy and once a week they had to get a taxi to a neighbouring town to use the laundromat there. This trip cost approximately \$8.00 to \$10.00 each way. The tenant testified that she did have a vehicle but could not afford to insure it so was unable to use it for these trips. The tenants seek to recover compensation or a rent reduction for the four months they were without the use of the washer at \$50.00 per month to a total amount of \$200.00.

The tenant testified that the landlord did not return the tenants' security deposit within 15 days of receiving their forwarding address in writing. The landlord did not schedule a move in or a move out inspection of the unit despite ample time to do so. The landlord was not given written permission to keep all or part of the security deposit and the tenant testified the unit was left clean at the end of the tenancy. The tenants seek to recover the amount of \$600.00 which includes the doubling provision allowed under the *Residential Tenancy Act (Act)*.

The tenant testified that they were illegally evicted from the rental unit as the landlord used outdated eviction Notices. The tenant agreed that they did not file an application to cancel either the One Month Notice or the 10 Day Notice which were posted on the door on August 24, 2015. The tenant testified that the rent was paid before they received the 10 Day Notice. The tenant testified that the landlord accused the tenants of smoking in their unit but did not provide a warning notice prior to the One Month Notice. As the tenants decided to vacate the rental unit because of this Notice the tenant had to take time off work and seeks to recover loss of earnings of \$100.00.

The landlord's agent testified that the washer did break down in June, 2015 from misuse by the tenants. The landlord's agent did her best to get the washer repaired in a timely manner and contacted the supplier of the washer. The washer was not a common type and the supplier could not get the part. Eventually a part was found and the washer was repaired in October, 2015. The landlord agreed that the washer was included in the tenants' rent.

The landlord agreed that they failed to do the move in and move out condition inspection reports at the start and end of the tenancy and agreed that they did not file an application to keep all or part of the security deposit and have retained the deposit due to damages and cleaning not completed by the tenants. The landlord testified that the tenants did not leave the rental unit clean and in fact it was left very dirty.

The tenant testified that the only damage she was aware of in the unit was some slight scraping on a wall but testified that would not be sufficient to justify keeping the entire security deposit.

The landlord's agent asked the tenant if she cleaned the unit. The tenant responded yes. The landlord's agent informed the tenant that this was the dirtiest unit she has ever seen and the landlord's photographic evidence confirms this. The tenant responded that they did clean the unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants' claim for a rent reduction or compensation or the loss of the washer for four months; while I am satisfied that the landlord attempted to get the washer repaired, the fact remains that the rent included laundry facilities and the tenants were without those facilities for a four month period. While this may not have been the direct fault of the landlord, when a facility such as a washer are included in the rent and then become unavailable the landlord should have offered the tenants a rent reduction until the washer was repaired to compensate the tenants for having to go to a laundromat. Consequently, I find the amount claimed of **\$200.00** for the entire four months to be a reasonable amount and therefore find the tenants are entitled to a Monetary Order to recover this from the landlord.

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

Further to this s. 23(4) and 35(3) of the *Act* require a landlord to complete a condition inspection report at the beginning and end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspections or to sign the condition inspection report. In failing to complete the condition inspection reports when the tenants moved in and out, I find the landlord contravened s. 23(4) and 35(3) of the *Act*. Consequently, s. 24(2)(c) and s. 36(2)(c) of the *Act* says that the landlord's right to claim against the security or pet deposit for damages is extinguished.

When a landlord's right to claim against the security deposit has been extinguished the landlord 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 landlord their forwarding address in writing.

Therefore, based on the above and the evidence presented I find that the landlord did receive the tenants' forwarding address in writing on November 24, 2015. As a result, the landlord had until December 09, 2015 to return all of the tenants' security deposit. As the landlord failed to do so, the tenants have established a claim to have the security deposit doubled to an amount of **\$600.00**, 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 tenants' claim for the loss of earning of \$100.00, due to an alleged illegal eviction; the tenants were served a 10 Day Notice to End Tenancy for unpaid rent on August 24, 2015 which was posted to their door and therefore deemed served on August 27, 2015; however, the tenants had paid the rent on August 20, 2015. Therefore at the time the Notice was served there was no outstanding rent which makes that Notice null in void.

The landlord also served the tenants with a One Month Notice to End Tenancy for cause on August 24 which was also deemed served on August 27, 2015. The tenants argued that they did not have time to file an application to cancel this Notice and as it was on an outdated form it should be null in void. I find when the tenants are served a Notice to End Tenancy they should still file an application to cancel that Notice if they want the tenancy to continue or feel the reasons on the Notice are not based on fact. At the hearing the Arbitrator will make a decision on whether or not the Notice is outdated or whether the information contained on the Notice is still current.

Regardless, if the tenants choose to vacate the rental unit without contesting the Notice, I must find that it was the tenants' choice to vacate the rental unit without seeking

Dispute Resolution and therefore the tenants' claim to recover any loss of earnings incurred in taking time off work to move out must be dismissed.

As the tenants' claim has some merit I find the tenants are entitled to recover their filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants pursuant to s.38(6)(b) and 72(1) of the *Act* for the following amount:

Compensation for loss of use of the washer	\$200.00
Double the security deposit	\$600.00
Filing fee	\$50.00
Total amount due to the tenants	\$850.00

Conclusion

I HEREBY FIND in partial 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 landlord. Should the landlord 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: June 14, 2016

Residential Tenancy Branch