



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for a monetary order for \$872.88, a request for recovery of the \$100.00 filing fee, and a request to retain the full security deposit of \$750.00 towards the claim.

The tenant's application is a request for a monetary order for \$2100.00, and a request for recovery of their \$100.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not the landlords or the tenants have established monetary claim against the other, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on July 1, 2014 and ended on April 30, 2016.

The parties also agree that the tenants paid a security deposit of \$750.00 on July 1, 2014.

The tenants also agree that both a move-in and move out inspection were done, and that the tenant gave the landlord a forwarding address in writing on the moveout inspection form on April 30, 2016.

The landlord testified that after the tenancy ended she discovered that the tenants had not paid a substantial amount of utilities during the tenancy, even though utilities were not included in the tenancy agreement.

The landlord further testified that the tenant failed to pay utilities as follows:

April 1, 2015 to June 30, 2015	\$178.08
July 1, 2015 to September 30, 2015	\$190.06
October 1, 2015 to December 31, 2015	\$186.52
January 1, 2016 to March 31, 2016	\$175.19
April 2016/prorated	\$58.40
Total	\$788.25
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The landlord further testified that the tenants also left burned-out light bulbs in the rental unit, and the cost to replace those bulbs is \$84.63.

Therefore the total amount that the landlord is requesting from the tenants is as follows:

Total unpaid utilities	\$788.25
Cost of light bulbs	\$84.63
Filing fee	\$100.00
Total	\$972.88

The landlord is therefore requesting an order to retain the full security deposit of \$750.00 towards this claim and requests that a monetary order be issued for \$222.88.

The tenants testified that, under the tenancy agreement, they were required to pay the utilities, however the landlord never submitted any utility invoices during the tenancy, and therefore they don't believe they should have to pay this amount, which was sprung on them at the very end of the tenancy.

The tenants also testified that there is no mention of light bulbs on the moveout inspection report, and there were numerous light bulbs that they had to replace when they moved into the rental unit at the beginning of the tenancy.

The tenants further testified that they did not give the landlord any permission to keep their full security deposit and had only agreed on the moveout inspection report to allow the landlord to retain \$175.19 plus April utilities. They are therefore requesting an order that the landlord be required to pay them double the amount of the security deposit as it was not returned within the 15 day time limit.

The tenants are also requesting the return of \$600.00, in what they believe was an illegal rent increase. The tenants testified that, when they signed a new tenancy agreement with the landlord, she increase the rent by \$200.00 per month, without giving them the three months notification required under the act, and therefore they believe they should get three months of that increase returned for a total of \$600.00.

The tenants are therefore requesting a monetary order as follows:

\$750.00 security deposit doubled	\$1500.00
Rent overpayment of \$200.00 per month for three months	\$600.00
Filing fee	\$100.00
Total	\$2200.00

In response to the tenants testimony the landlord testified that she did not discover the full amount of the outstanding utilities until after the moveout inspection report was signed, and she informed the tenants of those outstanding utilities when she discovered the amount that was owed.

The landlord further testified that the tenants were in a fixed term tenancy agreement that required them to vacate at the end of that term, and therefore, when they signed a new agreement, this established a new tenancy, and she was allowed to set the rent at whatever level they agreed to on the tenancy agreement.

Analysis

Landlords application

Utilities

It is my finding that the landlord has shown that the tenants owe outstanding utilities totaling \$788.25. In the tenancy agreement the tenants were required to pay utilities and although the landlords may have failed to present the utility bills during the tenancy, that does not absolve the tenants from their obligation to pay the utilities.

I therefore allow the landlords request for those outstanding utilities.

Light Bulbs

I will not allow the landlords request for the cost of replacing light bulbs as there is nothing on the moveout inspection report that mentions any missing or burned-out light bulbs and, although the landlord states that is because it was daytime during the moveout inspection report, the landlord still has a responsibility to ensure that a proper moveout inspection is done, and therefore the light bulbs should have been checked during the inspection, and if they were not, the landlord cannot add on the cost of replacing light bulbs after the report has been finalized and signed.

Filing Fee

I will allow the landlords claim for recovery of the \$100.00 filing fee as I have still allowed a substantial amount of the landlords claim.

Conclusion of landlord's application

The total amount I have allowed in the landlords application is \$888.25, and the remainder of this claim is dismissed without leave to reapply.

Tenants application

Security Deposit

Section 38(1) of the Residential Tenancy Act states:

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.

Further, section 38(6) of the Residential Tenancy Act states:

38(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.

The tenants did not agree to allow the landlord to keep the full security deposit, and therefore the landlord should have returned the remaining deposit or applied for dispute resolution within the 15 day time frame.

This tenancy ended on April 30, 2016 and the landlord had a forwarding address in writing by April 30, 2016 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished. Therefore the landlord was required to apply for dispute resolution by May 15, 2016.

Section 2.6 of the Residential Tenancy Branch Rules of Procedure states:

The Application for Dispute Resolution has been made when it has been submitted and the **fee is paid** or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or through a Service BC office.

In this case, therefore, the landlord's application for dispute resolution was is considered filed on May 16, 2016, as that is the day that the filing fee was paid, and therefore was not within the 15 day time limit required.

It is my decision therefore that the landlord may not make a claim against the security deposit, and must return double the \$750.00 security deposit to the tenants for a total of \$1500.00.

Rent Increase

I will not allow the tenants request for return of the money paid when the rent was increased at the signing of the new tenancy agreement.

The landlord is correct, the tenants were in a fixed term tenancy agreement that required them to vacate the rental unit at the end of that fixed term, and therefore their tenancy technically ended at the end of that fixed term, and this new agreement established a new tenancy, and the landlord was not restricted in the amount of rent allowed under the new tenancy.

Filing Fee

Having allowed a substantial amount of the tenant's claim I will allow the request for recovery of their \$100.00 filing fee.

Conclusion of tenants application

Therefore the total amount of the tenant's claim I have allowed is \$1600.00 and the remainder of this claim is dismissed without leave to reapply.

Overall Conclusion of Both These Files

I have allowed \$888.25 of the landlords claim, and I have allowed \$1600.00 of the tenants claim, and I therefore set off the \$888.25 against the \$1600.00 and I have issued an order for the landlord to pay \$711.75 to the tenants.

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: November 02, 2016

Residential Tenancy Branch