



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on July 26, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order compelling the Landlord to return all or part of the security deposit or pet damage deposit;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant M.S. attended the hearing on behalf of both Tenants. The Landlord attended the hearing on his own behalf. Both parties in attendance provided a solemn affirmation.

On behalf of the Tenants, M.S. testified the Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, was served on the Landlord by registered mail on August 2, 2016. The Landlord acknowledged receipt of the Application package at around that time. The Landlord did not submit any documentary evidence in response to the Tenants' Application.

The parties were represented at the hearing and were prepared to proceed. No issues were raised with respect to service or receipt of the Tenants' Application package. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Preliminary and Procedural Matters

The Tenants' Application confirms the Tenants sought an order granting the return of the security deposit or pet damage deposit, and to recover the filing fee. However, the amount claimed on the Application, supported by a Monetary Order Worksheet, dated June 17, 2016, and other documentary evidence, confirms the Tenants also sought \$922.33 for money owed or compensation for damage or loss. Accordingly, I find it appropriate in the circumstances, and pursuant to section 64 of the *Act*, to amend the Tenants' Application to include a claim for money owed or compensation for damage or loss. The Tenants' Application has been amended accordingly.

Issues to be Decided

1. Are the Tenants entitled to an order compelling the Landlord to return all or part of the security deposit or pet damage deposit?
2. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began on January 1, 2014, and ended on January 31, 2016. At the end of the tenancy, rent in the amount of \$2,150.00 per month was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$1,075.00 at the beginning of the tenancy.

The Tenants applied to have the Landlord return all or part of the security deposit or pet damage deposit to them. On behalf of both Tenants, M.S. testified the Tenants provided the Landlord with a copy of the forwarding address before the end of the tenancy. M.S. stated he agreed the Landlord could retain \$98.40 for some damage, but is entitled to the return of the balance of the security deposit.

In reply, the Landlord confirmed he received a forwarding address from the Tenants, and that he returned some three hundred dollars to them after making some deductions for carpet cleaning and other costs. Although asked to do so, neither M.S. nor the Landlord was able to provide testimony concerning the amount received by the Tenants.

The Tenants also sought to recover \$922.33 from the Landlord for various items M.S. submitted should be borne by the Landlord. First, the M.S. testified that utilities such as BC Hydro and Fortis BC were shared with the downstairs tenant. The Tenants paid the full amount of these invoices, and recovered 1/3 from the downstairs tenant. The Landlord agreed the arrangement was as claimed by M.S., but denied he is obligated to reimburse the amount owed by the downstairs tenant.

In support of this aspect of the Tenants' claim, the Tenant submitted into evidence two invoices from BC Hydro confirming \$281.69 owing from the downstairs tenant, which has not been paid. The Tenants also submitted into evidence three Fortis BC invoices showing \$41.64 owing by the downstairs tenant.

Further, the Tenants sought to recover \$399.00 from the Landlord, and provided a receipt from a carpet cleaner in support. M.S. testified that this amount was retained by the Landlord from the security deposit. However, M.S. stated the Tenants had the carpets professionally cleaned twice during the tenancy, the last time being four months before the end of the tenancy. He advised the carpets were in good condition when the Tenants vacated the rental unit.

In reply, the Landlord testified that he has photographs confirming the condition of the rental unit at the end of the tenancy. These photographs were not submitted into evidence.

Finally, M.S. testified the oven was not functioning properly during the final month of the tenancy, although the stove top was working. They seek \$200.00 for the inconvenience.

In reply, the Landlord clarified that the top burner was working but that the bottom burner was not. He tried to fix it with no success before the tenancy ended.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after the latter of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Upon receiving a tenant's forwarding address in writing, a landlord has 15 days to return the security deposit or make a claim against the security or pet damage deposit by filing an application for dispute resolution.

In this case, the Tenants and the Landlord agree a forwarding address was provided to the Landlord in writing before the end of the tenancy. In addition, the Tenant M.S. agreed the Tenants permitted the Landlord to retain \$98.40 on account of some damage caused during moving. However, the Landlord retained more than this and returned only a portion of the security deposit to the Tenants. Unfortunately, neither party could confirm how much was paid to the Tenants, making it impossible to determine with any degree of accuracy the amount owing to the Tenants, if any. In light of the uncertainty in the evidence, I decline to award the Tenants any amount for the return of the security deposit. This aspect of the Tenants' claim is dismissed.

With respect to the Tenants' claim to recover shared utility charges, Policy Guideline 1 states:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas, or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

[Reproduced as written.]

Applying Policy Guideline 1, I find the downstairs tenant was under different tenancy agreement with the Landlord than the Tenants. Accordingly, the Tenants are entitled to recover from the Landlord utility charges that remained unpaid by the downstairs tenant at the end of the tenancy. The Tenants are entitled to a monetary award in the amount of \$323.33.

With respect to the Tenant's claim to recover the \$399.00 for carpet cleaning, I award the Tenants this amount. This amount was withheld from the security deposit by the Landlord contrary to section 38 of the *Act*. Again, upon receiving the Tenants' forwarding address in writing, the Landlord was obligated to return the security deposit to the Tenants or make a claim against the security deposit by filing an application for dispute resolution. It was not within his rights as Landlord to arbitrarily retain funds as he saw fit.

Finally, with respect to the Tenant's claim for \$200.00 for an oven that was not fully functional, I am satisfied that the lower burner in the oven was not functioning for much of January 2016, and that this was an inconvenience for the Tenants. However, the Tenants enjoyed the remainder of services and facilities provided under the tenancy agreement. Accordingly, I award the nominal amount of \$50.00 for this aspect of the Tenant's claim.

Having been successful, I also grant the Tenants \$100.00 as recovery of the filing fee paid to make the Tenants' Application.

Pursuant to section 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$872.33, which consists of \$323.33 for utility charges paid by the Tenants, \$399.00 for carpet cleaning charges wrongfully withheld by the Landlord at the end of the tenancy, \$50.00 for loss of use of the oven in January 2016, and \$100.00 as recovery of the filing fee.

Conclusion

The Tenants are granted a monetary order in the amount of \$872.33. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 01, 2017

Residential Tenancy Branch