



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction:

This hearing was convened in response to cross applications.

The Tenants filed an Application for Dispute Resolution in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The male Tenant stated that on July 15, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenants submitted with the Application were sent to the Landlords, via registered mail. The Landlord stated that these documents were received and that she is representing the male Landlord at these proceedings. The evidence was accepted as evidence for these proceedings.

The Landlords filed an Application for Dispute Resolution in which the Landlords applied to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that on March 03, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlords submitted with the Application were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents, with the exception of the second series of emails labelled #9 and the 4 pages of photographs following those emails. The evidence the Tenants acknowledged receiving were accepted as evidence for these proceedings.

The Landlord declined the opportunity for an adjournment for the purposes of re-serving the evidence the Tenants did not acknowledge receiving. She stated that she preferred

to proceed with the hearing without the benefit of that evidence. The evidence the Tenants did not acknowledge receiving was not accepted as evidence for these proceedings.

On July 13, 2017 the Landlords submitted 8 photographs to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on July 12, 2017. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?

Are the Tenants entitled to recover the cost of installing countertops and/or cleaning the chimney?

Are the Tenants entitled to aggravated damages?

Background and Evidence:

The Landlords and the Tenants agree that:

- this tenancy began on October 01, 2013;
- the tenancy ended on September 30, 2016;
- a security deposit of \$700.00 was paid;
- the Tenants did not authorize the Landlords to retain any portion of the security deposit;
- the Landlords did not file an Application for Dispute Resolution claiming against the security deposit; and
- on October 19, 2016 the Landlords sent the Tenants an etransfer, in the amount of \$1,052.80;
- \$700.00 of the etransfer represented a refund of the security deposit;
- \$352.80 presented a payment for laminate purchased by the Tenants; and
- the Tenants returned did not accept the etransfer that was sent on October 19, 2016.

The male Tenant stated that they handed their forwarding address to an agent for the Landlord on September 30, 2016 and he refused to accept it. He stated that the agent for the Landlord asked them to email the forwarding address to the Landlords. He stated that the forwarding address was emailed to the Landlords on October 02, 2016.

The Landlord stated that she received the Tenants forwarding address, via email, on October 02, 2016.

The Tenants have applied for the return of double the security deposit. The Landlord stated that the Landlords filed their Application for Dispute Resolution simply to determine whether or not double the deposit is due.

The Tenants are seeking compensation for cleaning the chimney. The male Tenant stated that they had the chimney cleaned on October 25, 2013. He stated that they did not ask the Landlords to clean the chimney but the Landlords told them they should clean the chimney if they wanted to use the chimney. He acknowledged that the Landlords never agreed to have the chimney cleaned, but he believes it was their responsibility.

The Landlord stated that they did not clean the chimney when they were living in the unit because they burned special logs to clean the chimney and they burned their fires at very high temperatures. She stated that the Landlords never agreed to clean the chimney but the Tenants told them their insurance company required it to be cleaned, at which point The Landlords told the Tenants they had permission to have it cleaned.

The Tenants are seeking compensation, in the amount of \$352.80, for laminate they purchased for the kitchen countertop. The Landlord agreed that the Tenants are entitled to compensation in this amount.

The Tenants are seeking compensation, in the amount of \$1,400.00, for aggravated damages. The male Tenant stated that they are seeking this compensation because the Landlords were "willfully negligent" in returning the security deposit. The male Tenant stated that the Landlords attempted to "retaliate" against the Tenants for "asserting their right" to the return of the security deposit by "inflating alleged details" in an email to the Tenants. He stated that the Tenants were offended by the allegation that the property was not left in good condition, as he believes the unit was improved by the Tenants during the tenancy, and they contend their reputation was damaged as a result of the false allegations.

Analysis:

On the basis of the undisputed evidence I find that this tenancy ended on September 30, 2016 and that the Landlords received a forwarding address for the Tenants, via email, on October 02, 2016.

In determining that the Landlords received the Tenants' forwarding address in writing, via email, I was guided, in part, by the definition provided by the Black's Law Dictionary Sixth Edition, which defines "writing" as "handwriting, typewriting, printing, photostating, and every other means of recording any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof". I find that an email meets the definition of written as defined by Black's Law Dictionary.

Section 6 of the *Electronics Transactions Act* stipulates that a requirement under law that person provide information or a record in writing to another person is satisfied if the person provides the information or record in electronic form and the information or record accessible by the other person in a manner usable for subsequent reference, and capable of being retained by the other person in a manner usable for subsequent reference. As emails are capable of being retained and used for further reference, I find that an email can be used by a tenant to provide a landlord with a forwarding address pursuant to section 6 of the *Electronics Transactions Act*.

Section 88 of the *Residential Tenancy Act (Act)* specifies a variety of ways that document other than documents referred to in section 89 of the Act, must be served. Service by text message or email is not one of methods of serving documents included in section 88 the Act.

Section 71(2)(c) of the Act authorizes me to conclude that a document not given or served in accordance with section 88 or 89 of the Act is sufficiently given or served for purposes of this Act. As the Landlord acknowledged receiving the email in which the Tenants provided a forwarding address, I find that the Landlords were sufficiently served with the Tenants' forwarding address.

Section 38(1) of the Act stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or file an Application for Dispute Resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlords failed to comply with

section 38(1) of the *Act*, as the Landlords did not file an Application for Dispute Resolution in which they applied to retain the security deposit and they did not attempt to return the deposit until the 17 days after the tenancy ended and the forwarding address was received.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlords did not comply with section 38(1) of the *Act*, I find that the Landlords must pay the Tenants double the security deposit.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the Tenants have submitted insufficient evidence to establish that health, safety and housing standards require a chimney to be cleaned. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that established that health, safety and housing standards require that chimneys be cleaned. In the absence of evidence that establishes the Landlords had a legal obligation to clean the chimney, I dismiss the Tenants' application to recover the cost of cleaning the chimney.

As the Landlord agreed that the Tenants are entitled to \$352.80 for laminate they purchased for the kitchen countertop, I grant the Tenants' claim to this amount.

Residential Tenancy Branch Policy Guideline #16 reads, in part:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

I find that the doubling of the damage deposit adequately compensates the Tenants for the delay in recovering their security deposit. I find that to be particularly true in these circumstances, where the Tenants refused to accept the security deposit that was returned to them two days after the deadline for returning it. As the Tenants have been adequately compensated for the delay, I dismiss their claims for "aggravated damages" for any delay.

I have authority to grant compensation for losses that arises from one party failing to comply with the *Act* or the tenancy agreement. I do not have authority to grant compensation for damaging a party's reputation or offending a party's integrity. I therefore dismiss the claim for "aggravated damages" for any disagreement regarding the condition of the rental unit.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file an Application for Dispute Resolution.

I find that the Landlords' Application for Dispute Resolution has been without merit and I therefore dismiss their application to recover the fee paid to file an Application for Dispute Resolution.

Conclusion:

The Tenants have established a monetary claim of \$1,852.80, which includes double the security deposit, \$352.80 for laminate, and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlords do not voluntarily comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court, and enforced 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 Act.

Dated: August 11, 2017

Residential Tenancy Branch