



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNSD

Landlord: FFL MNDCL-S MNDL-S MNRL-S

Introduction

This decision pertains to cross applications for dispute resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s application for dispute resolution was made on May 14, 2018 (the “Tenant’s Application”). The Tenant applied for a monetary order for the return of his security deposit.

The Landlords’ application for dispute resolution was made on June 7, 2018 (the “Landlords’ Application”). The Landlord applied for the following relief:

1. a monetary order for damage or compensation, security deposit applied;
2. a monetary order for damage, security deposit applied;
3. a monetary order for utilities, security deposit applied; and,
4. a monetary order for recovery of the filing fee.

The Tenant, the Landlord, and the Landlord’s daughter (the “Representative”) attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant testified that they served the Notice of Dispute Resolution Proceeding package (the “package”) on the Landlord by registered mail, which was received by the Landlord on May 25, 2018. The Representative testified that while they received the package on that date, the first page—the one-page *Notice of Dispute Resolution Proceeding* document which contains the hearing information—was not included. The Landlord had to attend to the Residential Tenancy Branch office in Burnaby in early June 2018 to find out what the application was about. The Tenant testified that he sent

the Landlord everything that he was supposed to. I am satisfied that, while the first page of the package was missing, the Landlord was provided with sufficient notice of the hearing scheduled for July 5, 2018.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of these applications are considered in my decision.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for the return of his security deposit?
2. Is the Landlord entitled to a monetary order for damage or compensation, security deposit applied?
3. Is the Landlord entitled to a monetary order for damage, security deposit applied?
4. Is the Landlord entitled to a monetary order for utilities, security deposit applied?
5. Is the Landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Tenant testified that they moved into the rental unit on September 1, 2017 and moved out at some point between April 10-15, 2018. The rental unit consisted of a fully furnished basement suite shared with 3 other occupants (each of which had his or her own tenancy agreement with the Landlord). The Tenant had his own, locked bedroom. The residential property has four bedrooms and two bathrooms, and a shared common room, a laundry room, and a kitchen.

Monthly rent was \$650.00, due on the first of the month, and the Tenant paid a security deposit of \$325.00. The tenancy agreement states that "monthly rent also includes heating, hot water, electricity and high speed internet, but excludes a private line." A copy of the written tenancy agreement was submitted into evidence.

The Tenant sent an email, with the subject line "Damage Deposit Cheque" to the Landlord's husband on May 13, 2018, in which he includes his forwarding address. The Landlord responded on May 14, 2018, in which he refers to an attached PDF of a revised bill for hydro use and broken latches, and the statement "Therefore please review my detailed calculations if you want to take it to Tenancy Branch." The Landlord did not dispute the Tenant's testimony or documentary evidence on this issue. The Tenant testified that at no time did he provide written consent for the Landlord to retain any of the security deposit.

The Landlord's Representative testified that they are claiming \$200.00 for excessive hot water use, and, \$125.00 for two broken window latches. The Landlord submitted receipts for the latches.

The Representative acknowledged that the tenancy agreement refers to hot water being included in the rent, but that the Tenant takes hot showers lasting more than 1 hour, and that they received a complaint from the other occupants that the Tenant once took a shower lasting more than 3 hours. The Landlord testified that the hydro bill was \$40.00-50.00 more per month than a previous year, before the Tenant moved in.

The Landlord's Representative testified that they discovered a broken window latch in the common room, and because no one came forward to accept responsibility for breaking it, the Landlord split the cost evenly between the occupants. In addition, the Landlord testified that the Tenant broke a window latch in his bedroom.

The Tenant disputed the Landlord's testimony, and argued that it was not him who broke the common room's window latch. He also disputed that he broke the window latch in his bedroom. Finally, he testified that while he likes to take 40- to 60-minute-long showers, he certainly does not take 3-hour-long showers.

The Landlord's Representative testified that they did not complete a condition inspection report at the start of the Tenant's tenancy, nor did they complete a condition inspection report at the end of the Tenant's tenancy.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 38(1) of the Act, "Return of security deposit and pet damage deposit" states:

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

- (a) the date the tenancy ends,
- (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.

Section 38(6) states that where a landlord fails to comply with section 38(1), the landlord (a) may not make a claim against the security deposit, and (b) must pay the tenant double the amount of the security deposit.

The Tenant provided undisputed testimony, and submitted supporting documentary evidence, that the Landlord received the Tenant's forwarding address on May 13 or May 14, 2018. The Tenant did not agree in writing that the Landlord could retain any or all of the security deposit pursuant to section 38(4). The Landlord applied for dispute resolution on June 7, 2018, 25 days after receiving the Tenant's forwarding address. The Landlord did not make an application for dispute resolution claiming against the security deposit within 15 days of receiving the Tenant's forward address in writing.

Therefore, taking into consideration all of the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find the Tenant has met the onus of proving their case that they are entitled to a monetary order for the return of the security deposit. I further find that the Landlord has not complied with section 38(1) of the Act and, pursuant to section 38(6)(b) must pay the Tenant double the amount of the security deposit for a total of \$650.00. Pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of \$650.00.

Sections 24(2) and 36(2) of the Act states that the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord does not complete a condition inspection report and give the tenant a copy in accordance with the regulations at the start of and at the end of the tenancy. The Landlord did not complete a condition inspection report on either occasion and as such has extinguished their right to claim against the security deposit for damage to the rental unit or residential property. As such, I dismiss the Landlord's application for all claims made against the Tenant's security deposit.

The Landlord claims that the Tenant is either jointly or solely responsible for the broken latch in the common room. The Tenant disputes this. The Landlord further claims that the Tenant is responsible for the broken latch in the bedroom. The Tenant disputes this.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In

this case, I find that the Landlord has failed to provide any evidence, beyond their disputed testimony, that the Tenant was jointly or fully responsible for breaking either of the latches. As such, I do not find that the Landlord has met the onus of proving on a balance of probabilities that the Tenant is liable for the damage. I dismiss the Landlord's claim for compensation for damage to the latches.

In respect of the Landlord's submission that the Tenant's lengthy showering resulted in increased hydro bills, and that he is liable for compensating the Landlord an increase in costs, it is the Landlord who chose to include hot water in the rent. I am not persuaded by the Landlord's argument the Tenant should now be obligated to pay for hot water.

I dismiss the Landlord's application for a monetary order for recovery of the filing fee.

Conclusion

I grant the Tenant a monetary order in the amount of \$650.00. This Order must be served on the Landlord, and the Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

The Landlord's application is dismissed, without leave to reapply.

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: July 5, 2018

Residential Tenancy Branch