



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with applications by both the Tenant and the Landlords. The Tenant filed seeking return of double the security deposit and to recover the filing fee for this proceeding. The Landlord filed for compensations for damage to the unit, site or property, to retain part of the Tenant's security deposit and to recover the filing fee for the application.

The Tenant said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by mail on May 4, 2018. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by mail on May 6, 2018. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlords' hearing package as required by s. 89 of the Act.

Both parties confirmed receiving the other parties' hearing documents and the hearing proceeded with both the Landlords and the Tenant in attendance.

Issues(s) to be Decided

Tenant:

1. Is the Tenant entitled to the return of double the security deposit?

Landlord:

1. Is there damage to the unit, site or property and if so are the Landlords entitled to compensation?
2. Are the Landlords entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on August 1, 2014 as a fixed term tenancy for 12 months and then continued on a month to month basis. Rent was \$2,800.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,400.00 at the start of the tenancy. A move in condition inspection report was completed on August 13, 2014 and a move out condition inspection report was completed on April 25, 2018.

The Tenant said she gave written notice on March 6, 2018 that she was ending the tenancy on April 15, 2018. The Tenant said that she move out of the unit on April 14, 2018. In that letter the Tenant gave the Landlord her forwarding address and requested to have her security deposit sent to her. The Tenant continued to say the Landlord was away on holidays so they could not do the move out inspection until April 25, 2018. The Tenant said she kept the keys as the Landlord told her to do so and she returned the keys during the move out inspection. At the move out inspection the Tenant said she did not agree with the Landlord's damage claims so she would not agree to the deductions from the security deposit that the Landlord was requesting. The Tenant said that because the Landlord has not returned any of her security deposit she made this application for double the security deposit as stated in the Act.

The Landlord said that because the Tenant had the keys until April 25, 2018 they believe the tenancy did not end on April 14, 2018 but on April 25, 2018. The Landlords agreed they were on holiday from April 11, 2018 to April 25, 2018. The Landlord said they did not appoint an agent to do the move out inspection because they were going to do it on April 25, 2018 when they returned home. The Landlord said they made an application to retain \$700.00 of the Tenant's security deposit on May 2, 2018. The application is for \$600.00 to repair chips in the laminate flooring and \$100.00 to repair holes in the walls that were used to hold pictures. The Landlord submitted a paid receipt for \$600.00 for the floor repairs and the Landlord said he repaired the holes in the wall himself which he is claiming \$100.00 for.

The Tenant said she agreed to compensate the Landlord for 5 of the 10 chips in the floor, but the other chips were in the floor at the start of the tenancy. The Tenant continued to say that the Landlord did not want to negotiate a settlement so she filed her application.

The Landlord said the floors are approximately 6 years old and two tenants have lived in the unit with these floors. The Landlord continued to say the move in condition inspection report does not show any chips in the floors so they believe all the chips were caused by the Tenant. The Landlord submitted photographs of the chips in the laminate flooring.

The Tenant said she was tired when they did not move in inspection and she missed the chips in the floor but they were there at the start of the tenancy.

The Landlord said in closing the tenancy ended on April 25, 2018 and his application was made May 2, 2018 therefore the application met the time requirement of 15 days to return the deposit or make an application. The Landlord continued to say they text messaged the Tenant the cost of the repairs to the floors and it is a justified claim.

The Tenant said in closing that the Landlord has not returned any of her security deposit and he refused to negotiate, therefore the Tenant said she is requesting double her deposit back in the amount of \$2,800.00 and the filing fee of \$100.00.

Analysis

Section 45 of the Act says: (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Given that rent was due on the first of each month and the Tenant gave written notice to the Landlord on March 6, 2018; I find that the tenancy ended on April 30, 2018. Any notice given in the month of March has an effective vacancy or end date at the end of April or in this case April 30, 2018. Consequently the Landlord's application is within the 15 day time limit for either returning a deposit or making an application to retain a deposit.

Further the Landlord said they have only made an application for \$700.00 of the Tenant's security deposit of \$1,400.00. The Tenant said the Landlord has not returned any of her deposit. The Landlord did not dispute that they are holding the Tenant's full deposit of \$1,400.00. As a result of the Landlord not returning the portion of the Tenant's security deposit (\$700.00) that they were not requesting to retain, I find the Landlords are in violations of Section 38 of the Act.

Section 38 (1) says that 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.

And Section 38 (6) says 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.

I find from that the Tenant did give the Landlord a forwarding address in writing on March 6, 2018. The Landlord did not repay the undisputed part of the security deposit to the Tenant within 15 days of the end of the tenancy or 15 days after receiving the Tenant's forwarding address in writing, nor did the Landlord apply for dispute resolution to claim the undisputed \$700.00 of the deposit. Consequently I find for the Tenant and I award the Tenant double the undisputed portion of the security deposit of \$700.00 in the amount of $\$700.00 \times 2 = \$1,400.00$.

With respect to the Landlords' claim for damages to the flooring, all flooring has a economic life expectance. Policy Guideline #40 says hardwood has a life expectancy of 20 years and laminate flooring is less durable an hardwood, therefore I determine the life expectancy of laminate flooring is 15 years. The laminate flooring in this situation has 9 years of life expectancy remaining.

Further Section 32 (4) of the Act says (4) A tenant is not required to make repairs for reasonable wear and tear.

As the laminate flooring is 6 years old and this tenancy was for 4 years, I accept the Tenants testimony that some of the damage to the floor is wear and tear. Further I accept the Tenant's testimony that she was willing to pay for 5 of the 10 chips in the

laminate flooring. Therefore I award the Landlord \$300.00 as full compensation for the damage to the laminate flooring.

With regard to the holes in the walls I accept the Landlord's testimony that the Tenant did not repair the holes and he spent time doing wall repairs and painting. Consequently I award the Landlords their claim of \$100.00 for wall repairs.

As the both the Landlords and Tenant were only partially successful in this matter I further order both the Landlords and the Tenant to bear the cost of the filing fee of \$100.00 for this proceeding which they have already paid.

A Monetary Order has been issued to Tenant representing the following:

Tenant's award:

Double the undisputed security deposit	\$1,400.00	
Sub total		\$1,400.00

Less

Landlords' award:

Damage to the flooring	\$ 300.00	
Damage to the walls	\$ 100.00	
Sub total		\$ 400.00
Balance owing to the Tenant		\$ 1,000.00

Conclusion

I grant a Monetary Order for \$1,000.00 to the Tenant. The order must be served on the Respondents and is enforceable through the Provincial Court of British Columbia (small claims court) 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: July 09, 2018

Residential Tenancy Branch