



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND MNDC FF
 Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application was made on February 27, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site, or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants’ Application was made on February 18, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order that the Landlord return all or part of the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on her own behalf. T.P. attended the hearing on behalf of both Tenants. The Landlord and T.P. provided affirmed testimony.

The Landlord testified the Landlord's Application package and a documentary evidence package were served on the Tenants by registered mail. T.P. acknowledged that each of the Tenants received the Application package, but denied receipt of any documentary evidence from the Landlord. During the hearing, the Landlord advised that she became aware that the Tenants had not received any documentary evidence about 4-6 weeks before the date of the hearing. However, she stated she no longer had documents to provide to the Tenants and that her evidence was not

I find there is insufficient evidence before me to conclude the Tenants were served with the Landlord's documentary evidence in accordance with the *Act* and the Rules of Procedure. Principles of natural justice and procedural fairness dictate that parties to a dispute be aware of the claim made against them and be given an opportunity to respond. In this case, I find the Tenants have not received the Landlord's documentary evidence. Accordingly, the Landlord's documentary evidence has been excluded from consideration.

On behalf of the Tenants, T.P. testified the Tenants' Application package and documentary evidence were served on the Landlord by registered mail. The Landlord acknowledged receipt. During the hearing, no issues were raised with respect to service or receipt of these documents. Pursuant to section 71 of the *Act*, I find these documents were sufficiently served on the Landlord for the purposes of the *Act*.

The parties were provided with a full 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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site, or property?
2. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
3. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit or pet damage deposit?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on June 1, 2017. The tenancy ended on January 31, 2018, pursuant to a signed Mutual Agreement to End a Tenancy, dated January 10, 2018 (the "Mutual Agreement"). A copy of the Mutual Agreement was submitted into evidence by the Tenants. Rent was due in the amount of \$1,300.00 per month. The Tenants paid a security deposit of \$650.00 and a pet damage deposit of \$50.00, which the Landlord holds.

The Landlord's Claim

The Landlord claimed \$1,830.00 for damage she stated was caused by the Tenants. The Landlord provided oral testimony during the hearing describing the following:

- electrical damage in the landing area;
- damaged entrance door handle;
- "stopper" removed from door, resulting in damage to the trim;
- damaged dresser/wardrobe in the bedroom;
- damaged grill on the kitchen stove;
- 1-1/2" holes drilled in concrete walls;
- dog hair in washing machine;
- general cleaning required;
- painting required in the rental unit; and
- chips in laminate flooring.

Although the Landlord provided estimates of the cost to repair some of the items referred to, she was unable to provide precise amounts as she did not have her evidence before her. As noted above, the

The Landlord also claimed rent for the month of February 2018. She testified the Tenants vacated the rental unit without proving sufficient notice.

In reply, T.P. disputed the Landlord's claims regarding damage. She did acknowledge the Tenants did not provide sufficient notice. However, she referred to the Mutual Agreement, which ended the tenancy by agreement on January 31, 2018. The

Landlord testified during the hearing that she felt pressured by the Tenants to sign the Mutual Agreement but did not provide further details.

The Tenants' Claim

The Tenants claimed \$1,400.00 for the Landlord's failure to repay the security and pet damage deposits or make an application for dispute resolution within 15 days after receipt of the Tenants' forwarding address in writing.

On behalf of the Tenants, T.P. testified she provided the Landlord with a forwarding address in writing, by text message, before the tenancy ended on January 31, 2018. The Landlord acknowledged receipt during the hearing.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

The Landlord's Claim

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that

can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for \$1,830.00 for damage in the rental unit, I find there is insufficient evidence before me to grant the relief sought. Specifically, there was insufficient evidence to satisfy me of the condition of the rental unit at the beginning and end of the tenancy. Further, the Landlord was unable to provide sufficient evidence of the value of any loss.

With respect to the Landlord's claim for \$1,300.00 for rent for the month of February 2018, I find the tenancy ended on January 31, 2018, pursuant to the Mutual Agreement. Through it, and despite the fixed term tenancy agreement, the Landlord provided her agreement to end the tenancy on January 31, 2018, relinquishing her entitlement to claim lost rent. That is, the Landlord is not now entitled to recover compensation for the Tenants' failure to provide adequate notice. Further, I find there is insufficient evidence before me in support of the Landlord's assertion she was pressured to sign the Mutual Agreement.

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

The Tenants' Claim

Section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the amount of the deposits.

In this case, I find the Tenants provided the Landlord with their forwarding address in writing before the end of the tenancy. Accordingly, the Landlord had until February 15, 2018, to repay the security and pet damage deposits to the Tenants or make an application for dispute resolution.

The Landlord has not returned the security and pet damage deposits to the Tenants, and did not make the Landlord's Application until February 27, 2018. Accordingly, I find the Tenants are entitled to double the amount of the deposits held, or \$1,400.00. Having been successful, I also grant the Tenants \$100.00 in recovery of the filing fee.

Pursuant to section 38 and 67 of the *Act*, I grant the Tenants a monetary order in the amount of \$1,500.00, which is comprised of \$1,400.00 for double the deposits and \$100.00 in recovery of the filing fee.

Conclusion

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

The Tenants are granted a monetary order in the amount of \$1,500.00. The monetary 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: September 18, 2018

Residential Tenancy Branch