



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNSD, RPP, FFT

For the landlord: MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for a monetary order for their security deposit, for an order requiring the landlord to return the tenants' personal property, and for recovery of the filing fee paid for this application.

The landlord applied for a monetary order for money owed or compensation for damage or loss and loss of rent revenue, and for recovery of the filing fee paid for this application.

Both tenants, their legal representative, and the landlord attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the applications. Both parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

I have reviewed the extensive oral, written, audio and video evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I provide only a summary of that which is relevant regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Procedural Matter

The tenants withdrew their claim for an order requiring the landlord to return the tenant's personal property. As a result, the hearing proceeded on the tenants' application for a monetary order for their security deposit and on the landlord's application for monetary compensation.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit and to recovery of their filing fee?

Is the landlord entitled to a monetary order for damage or loss and to recovery of her filing fee?

Background and Evidence

The written tenancy agreement states that this tenancy began on May 15, 2019, for a fixed term ending on December 31, 2019, with monthly rent of \$2,500.00 and a security deposit of \$1,250.00 being paid by the tenants. A written tenancy agreement was provided into evidence.

The tenants submitted that they moved into the rental unit on May 28, 2019.

The parties ultimately signed a mutual agreement to end the tenancy and the tenancy ended on July 5, 2019. The mutual agreement was submitted into evidence.

Tenants' application-

The tenants applied for a return of their security deposit on July 25, 2019, as the landlord continues to hold their security deposit.

The tenants stated that they provided their written forwarding address in a letter sent to the landlord by their legal representative at the time, dated July 4, 2019. The letter was provided into evidence.

The tenant said that there was a move-in inspection and a condition inspection report (CIR) was completed.

In response to my inquiry, the tenant stated that they were unable to complete the move-out inspection with the landlord as she did not allow their legal representative at the time to attend with them. The tenants submitted due to the recent actions of the landlord, they wanted a witness to attend with them and were not comfortable without a witness present.

Landlord's response-

The landlord said that she was never introduced to the tenants' representative at the move-out inspection and as he was a stranger to them, she indicated to the tenants that he had to stay outside for the inspection.

The landlord said the tenants refused the inspection without their witness and therefore, she never offered them a second opportunity to conduct the move-out inspection.

Landlord's application-

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damage to carpet, steam cleaning, yard work	\$5,528.55
2. Loss of 2 months' rent	\$5,000.00
3. Unpaid rent for July 1-5, 2019	\$403.25
TOTAL	\$10,931.18

The landlord's relevant evidence included, but was not limited to, extensive photographs and videos of the yard and rental unit, a receipt for steam cleaning, and a quote for carpet replacement, dated September 26, 2019, in the amount of \$3,542.43.

Damage to carpet-

In support of her application, the landlord said that the tenants' dogs damaged the carpet by pulling and by defecating and urinating all over the carpet. The landlord said that the tenants failed to properly clean the carpet and there remained an odour of feces and urine.

The landlord submitted that the smell from the tenants' dog has permeated the underlay of the carpet and the entire carpet and underlay will need replacing.

The landlord confirmed that the carpet has not been replaced.

Loss of rent revenue, 2 months-

The landlord said that she has been unable to re-rent the rental unit due to the carpet damage, as that it will need to be replaced. The landlord submitted that they have had numerous potential tenants to look at the rental unit, but she will not allow anymore tenants with indoor or large dogs.

The landlord opined that she would have re-rented the rental unit by now, except for the damage to the carpet.

The landlord confirmed she had not advertised the rental unit prior to her application being made on September 27, 2019.

Tenants' response-

The tenant submitted that they steam cleaned the entire carpet prior to vacating and referred to their video evidence as proof. The tenant AF submitted he spent 7 ½ hours steam cleaning the carpet.

The tenant submitted that one time their puppy was scared and startled by the landlord, causing her to urinate on the carpet; however, it was immediately cleaned by a specific pet odour cleaner.

The tenant submitted that they only lived in the rental unit for a little over a month, and that it was unreasonable that the entire carpet needed replacing.

The tenants submitted that their photographic evidence shows that the rental unit was in a clean and rentable state, so that the landlord should not have lost any rent.

The tenants submitted that their photographic evidence shows the yard was in good condition when they left, but did further say that the landlord's dogs, who live next door to the rental unit, often came onto the residential property yard and dug holes.

The tenants agreed the amount of \$403.25 for unpaid rent from July 1-5 and have previously asked the landlord to deduct this amount and return the balance of their security deposit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Tenants' application-

Section 38 deals with the return of tenant's security deposits.

This section of the Act requires that the landlord must repay the tenant's security deposit or make an application claiming against the security deposit within 15 days of the later of the day the tenancy ends and the date the landlord receives the tenant's written forwarding address.

If a landlord fails to do either, the landlord may not make a claim against the tenant's security deposit and must pay the tenant double the amount of their security deposit.

A tenant's right to the return of the tenant's security deposit is extinguished if they fail to participate in a move-in or move-out condition inspection of the rental unit.

In the case before me, I find the evidence shows that both parties attended the rental unit for the purpose of a move-out inspection; however, the landlord would not allow a witness to attend and the inspection never happened.

I find it reasonable in these circumstances of a tenancy ending early that the tenants would want a third party to attend the inspection, just as the landlord would have had that same opportunity. I find nothing under the Act that restricts either party from having a third party attend an inspection of the rental unit. I therefore find the landlord's actions prevented the tenants from conducting the final inspection.

Additionally, the landlord confirmed that she failed to provide the tenants a second opportunity to perform the final inspection, which she is required to do under section 35(2) of the Act, which extinguishes her right to claim against the tenants' security deposit.

In the case before me, the undisputed evidence shows that the tenancy ended on July 5, 2019, when the tenants vacated the rental unit and that the landlord received the tenant's written forwarding address on or about July 9, 2019, as it was deemed served 5 days after it was mailed on July 4, 2019.

The landlord would have had to file her application for dispute resolution within 15 days of July 9, 2019, or July 24, 2019 and instead, the landlord filed her application on September 27, 2019.

Due to the above, I find the tenants have not extinguished their right to a return of their security deposit and they are now entitled to double their security deposit. While the tenants have not sought double their security deposit, the doubling portion of the Act is mandatory under the above conditions as set out, as the tenants did not specifically waive their right.

I therefore find the tenants are entitled to a monetary award of \$2,500.00, or double their security deposit of \$1,250.00.

I also grant the tenants recovery of their filing fee of \$100.00.

Landlord's application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party, the landlord in this case, has the burden of proof to prove their claim on a balance of probabilities.

Damage to carpet-

The landlord has not yet replaced the carpet five months after the tenancy has ended and there is no evidence the landlord will ever replace the carpet.

As the landlord has not proven that she has suffered a loss or that she ever will, I dismiss her monetary claim for \$5,528.55.

Loss of rent revenue, 2 months-

In this case, one way a landlord may try to minimize their potential loss of rent revenue is to immediately or as soon as possible after the tenancy ends, advertise the rental unit in order to have tenants move in as soon as reasonably possible.

I find the landlord submitted insufficient evidence that she took reasonable measures to minimize her claimed loss as the landlord has not advertised the rental unit as of the day of her application.

I therefore find the landlord on this point has not met her burden of proof and I dismiss her claim for \$5,000.00.

Unpaid rent, July 1-5-

I grant the landlord's claim for \$403.25 as the tenants agreed.

Due to the above, I find the landlord is entitled to a monetary award of \$403.25.

I do not grant the landlord recovery of her filing fee as I have dismissed her entire claim, with the exception of the amount the tenants agreed to prior to the application being made.

Both applications-

I have granted the tenants a monetary award of \$2,600.00, comprised of their security deposit of \$1,250.00, doubled to \$2,500.00 and their filing fee of \$100.00.

I have granted the landlord a monetary award of \$403.25, for unpaid rent for July 1-5, 2019.

I offset the landlord's monetary award of \$403.25 from the tenants' monetary award of \$2,600.00, and grant the tenants a monetary order for the remaining portion, or \$2,196.75.

Should the landlord fail to pay the tenants this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenants' application has been granted and they have been granted a monetary award of \$2,600.00.

The landlord's application was minimally successful and she has been granted a monetary award of \$403.25.

The landlord's monetary award is offset with the tenants' monetary award and the tenants are granted a monetary order for \$2,196.75.

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: November 6, 2019

Residential Tenancy Branch