



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNRT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on November 5, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit;
- a monetary order for emergency repairs; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time. At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an 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. Are the Tenants entitled to an order that the Landlords return all or part of the security deposit and/or pet damage deposit, pursuant to section 38 of the *Act*?

2. Are the Tenants entitled to a monetary order for the cost of emergency repairs, pursuant to Section 33 of the *Act*?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 15, 2017 and ended on August 31, 2019. During the tenancy, rent was due in the amount of \$2,200.00 per month. The Tenants paid a security deposit of \$1,100.00 and a pet damage deposit in the amount of \$1,100.00 for a total of \$2,200.00 in deposits which the Landlord continues to hold.

The Tenant stated that he is seeking a monetary order in the amount of \$300.00 in relation to cleaning. The Tenant stated that in December 2018, a tree fell on the rental property during a windstorm, which caused significant damage to the rental property. The Tenant stated that he was required to move some of his possessions to the garage for safe keeping, as a portion of the house was inaccessible. The Tenant stated that when the roofers came to install a new roof, a large amount of debris fell on the Tenant's possessions which had been stored in the garage.

The Tenant stated that he mentioned this to the Landlord, who reassured him that the restoration company would be responsible for cleaning the debris that fell on the Tenant's possession. The Tenant stated that this never happened, therefore, he and two other tenants spend three days cleaning the debris, which involved disposing of some items at the dump. The Tenant is claiming for 30 hours of cleaning at \$10.00 per hour.

In response, the Landlord stated that at no point did the Tenant indicate that he was seeing reimbursement for cleaning costs. The Landlord stated that he negotiated a settlement through the insurance company which compensated the Tenants adequately for the loss of use of the rental property. The Landlord stated that he could have easily included the Tenants' claim for cleaning had he been made aware of it.

The Tenants are also seeking the return of their security and pet damage deposits in the amount of \$2,200.00. The Tenant stated that they he the Landlord the Tenants' forwarding address via text message on September 13, 2019 and again by registered mail sometime in early October 2019. The Tenant stated that he did not consent to the

Landlord retaining their security and pet damage deposits and that the Landlord has not yet returned them.

The Landlord confirmed receiving the Tenants' forwarding address on September 13, 2019. The Landlord stated that he felt entitled to retaining the Tenants' security deposit as he found the hardwood floors were scratched throughout the rental unit.

If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 33(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.
- (4) A landlord may take over completion of an emergency repair at any time.
- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
 - (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, I find that the Tenants provided insufficient evidence to support that the cleaning performed by the Tenants would constitute an emergency repair. Furthermore, I find that the Tenants provided insufficient evidence to demonstrate that they notified the Landlord regarding the need for cleaning, nor did the Tenants provide evidence that they provided the Landlord with a claim for reimbursement and receipts for the amount claimed.

I find that the Tenants could have mitigated their loss should they have communicated their claim to the Landlord in a timely manner so that the Landlord could have included

the claim for cleaning to the insurance company. In light of the above, I dismiss the Tenants' claim for cleaning costs in the amount of \$300.00 without leave to reapply.

The Tenants are claiming for the return of their security and pet damage deposits. Section 38(1) of the *Act* requires a landlord to repay deposits or make 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 comply with section 38(1) of the *Act* and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

In this case, the Tenants vacated the rental unit on August 31, 2019 and provided the Landlord with their forwarding address by text on September 13, 2019. The Landlord confirmed having received the Tenants' forwarding address on September 13, 2019. During the hearing, the parties agreed that the Landlord has not yet returned any deposits to the Tenants as the Landlord felt entitled to retaining the \$2,200.00 in relation to damaged hardwood floors.

As there is no evidence before me that that the Landlord was entitled to retain all or a portion of the security and pet damage deposits under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until September 28, 2019, to repay the deposit or make an application for dispute resolution should he feel entitled to retain some or all of the deposits. The Landlord did neither.

In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an award of double the amount of the security deposit paid to the Landlord (\$2,200.00 x 2 = \$4,400.00).

Having been successful, I also find the Tenants are entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to section 67 of the *Act*, I find the Tenants are entitled to a monetary order in the amount of \$4,500.00.

Conclusion

The Landlord breached Section 38 of the Act. The Tenants are granted a monetary order in the amount of \$4,500.00. The order may be filed in and enforced as an order of the Provincial Court of BC (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: March 19, 2020

Residential Tenancy Branch