



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MNDC-S, FF
For the tenant: MNSD, FF

Introduction

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

The landlord applied on June 22, 2021, for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The tenant applied on July 30, 2021, for:

- a return of her security deposit; and
- to recover the cost of the filing fee.

The landlords and the tenant attended the telephone conference call hearing and were affirmed.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. All parties affirmed they were not recording the hearing.

At the outset of the hearing, both parties confirmed receipt of the other's evidence and applications.

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 oral, written, and digital evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, I used my discretion to determine what evidence was relevant in these matters. Not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

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

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Is the tenant entitled to a return of her security deposit and to recover the cost of the filing fee?

Background and Evidence

This tenancy began on or about July 1, 2015 and ended on April 30, 2021. The tenant paid a security deposit of \$600, which has been retained by the landlord, having filed this claim against it. Filed in evidence was a copy of the written tenancy agreement.

Landlord's application –

The landlord's monetary claim is \$600, plus \$100 for recovery of the filing fee.

The landlord did not provide a breakdown of their monetary claim as required by Rule 2.5, but rather confirmed that they wanted to retain the tenant's security deposit in lieu of their losses.

The basis of the landlord's claim was due to alleged damage by the tenant that was beyond reasonable wear and tear.

The landlord said that the tenant agreed to replace the garage door, but did not.

The landlord submitted that the tenant removed one tire from a set of four, rendering the remaining three tires of little value. Landlord MS said she paid landlord MW \$400 for the tire replacement.

The landlord submitted that the tenant replaced the dishwasher during the tenancy and did not return the appliance when the house was vacated.

The landlord submitted that the tenant damaged the floor beyond repair, due to dog urine from unauthorized dogs in the rental unit. Additionally, the landlord said that the tenant removed the lock to the garage and did not inform the landlords, which caused the landlords to ask for a key to gain access to their storage.

The landlord submitted that the tenant left personal property in the rental unit and they had to make several runs to the landfill.

The landlord said that the home went up for sale in January 2021, and that it was sold without having made the repairs or replaced the garage door. There was no evidence that a payment was made for the tires.

The landlord confirmed there was not a move-in or move-out condition inspection report (Report).

Tenant's response –

The tenant submitted that she changed the locks to the garage when she found a homeless man wandering in the garage, but that she told the landlord she had a key for them.

The tenant submitted that she was forced to move due to the sale of the home, and was homeless directly thereafter, with an inability to retrieve everything from the home.

The tenant submitted that the landlords' dishwasher and stove were left in the garage, even though she bought a new, expensive stove.

The tenant denied knowing what had happened to the tire. The tenant submitted that the flooring was damaged at the start of the tenancy.

Tenant's application –

The tenant submitted that she provided the landlord with their forwarding address in a letter, mailed by Xpresspost, on June 4, 2021. The evidence was that the mail was delivered on June 7, 2021. Filed in evidence was the Xpresspost receipt showing the tracking number.

The tenant submitted that the landlord has not returned their security deposit and for this reason, the tenant is requesting that their security deposit be returned, and that this amount be doubled.

The tenant submitted she did not give consent to the landlords to retain any portion of the security deposit.

The tenant's monetary claim is \$1,263.62, comprised of the security deposit of \$600, doubled to \$1,200, \$63.62 for land title searches showing titles to the landlord's former and current homes, and the filing fee of \$100.

Landlords' response –

The landlord confirmed the tenancy ended on April 30, 2021, and that they received the tenant's forwarding address by Xpresspost.

The landlord confirmed that there was not a move-in or move-out inspection of the rental unit with the tenants.

The landlord confirmed they still retain the tenant's security deposit, having made an application to keep it.

As to the tenant's claim for title search fees, no response was required from the landlords.

Analysis

Landlord's application –

Test for damages or loss

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 in sections 7 and 67 of the Act. Accordingly, an applicant must prove **each** of 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 whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In order for the landlord to be granted authority to keep the tenant's security deposit of \$600, they must prove a loss suffered by the tenant's actions at least in the amount of \$600.

I find the landlord's application fails for various reasons. Firstly, the landlords provided no documentary evidence that they suffered a loss. The landlord confirmed that they did not make any repairs or replace the garage door, as the house was sold beforehand. As a result, I find they were unable to place a value on the alleged loss or

prove they suffered a loss. I would expect one way to prove a financial loss would be to provide receipts of the work done.

I additionally find that the landlords failed to comply with their obligations under the Act as there was no proof of a move-in or move-out inspection with the tenant and they confirmed there was no move-in or move-out Report. I then was unable to assess the state of the rental unit at the beginning of the tenancy compared to the end of the tenancy. For this reason, I was unable to determine whether the tenant damaged the rental unit beyond reasonable wear and tear.

For this reason, I find the landlords' right to claim against the tenant's security deposit for damage to the rental unit was extinguished under the Act.

For these reasons, I find the landlord submitted insufficient evidence to prove their monetary claim and I dismiss their application, without leave to reapply.

Tenant's application –

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

In this case, the tenancy ended on April 30, 2021, and the tenant provided their written forwarding address by Xpresspost when it was mailed on June 4, 2021. The evidence showed the mail was delivered on June 7, 2021.

The landlord filed an application claiming against the tenant's security deposit for alleged damage to the rental unit on June 22, 2021, which was the 15th day after receipt of the tenant's written forwarding address. Under sections 24(2) and 36(2) of the Act, however, a landlord's right to claim against the security deposit for damage is extinguished if they do not arrange for and conduct a move-out inspection and complete the inspection report.

I interpret this part of the Act to mean that the landlord forfeited their right to claim against the security deposit, as there was no move-in or move-out Report.

Additionally, Residential Tenancy Policy Guideline 17 C. 3 states that on a tenant's application for a return of the security deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to claim has been extinguished.

Due to the above, I find the landlord extinguished their right to make a claim against the tenant's security deposit for damages to the rental unit.

I therefore find the landlord was obligated to return the tenant's security deposit, in full, after receiving the tenant's written forwarding address by Xpress post on June 7, 2021.

I therefore **order** the landlord to return the tenant's security deposit and I find that this amount must be doubled.

I dismiss the tenant's claim for \$63.62, as I find this cost was the tenant's choice in incurring costs to provide evidence for her dispute resolution hearing, and was not from a breach of the Act by the landlords.

I grant the tenant recovery of their filing fee of \$100, due to their successful application.

I therefore find the tenant has established a monetary claim of \$1,300, comprised of their security deposit of \$600, doubled to \$1,200 and the filing fee paid for this application of \$100.

As a result, I grant the tenant a monetary order in the amount of \$1,300.

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

Conclusion

The landlord's application is dismissed without leave to reapply as I find the landlord submitted insufficient evidence to meet their burden of proof of a loss.

I grant most of the tenant's application, as I have ordered the landlord to return the tenant's security deposit of \$600 and that this amount must be doubled. I also granted the tenant recovery of their filing fee of \$100 and granted the tenant a monetary order in the amount of \$1,300. The part of the tenant's application seeking costs for title searches was 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 *Residential Tenancy Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 19, 2022

Residential Tenancy Branch