



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF
 MNSD, FF

Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the landlord is to keep all or part of the security deposit, a monetary order for damages and recovery of the filing fee. The application by tenant is for return of double the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 1, 2011 with monthly rent of \$800.00 and the tenant paid a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The landlord testified that the tenant vacated the rental unit on June 30, 2011 and that during the move out inspection the landlord found that the laminate floor had been badly damaged. The landlord stated that the tenant acknowledged the damage to the floor but that she had not told the landlord about the damage earlier as she had been afraid to. The landlord noted in their evidence that they had to spend considerable time tracking down boxes of the same laminate to repair the floor and eventually located more flooring.

The landlord stated that the suite, including the floors, had been newly renovated prior to the start of this tenancy and that the damage to the floors happened during this tenancy.

The landlord stated that on July 6, 2011 they confirmed with the tenant that they had received the tenant's forwarding address by email and advised the tenant that the repairs were taking some time to complete. The landlord stated that on July 17, 2011 after the repairs were completed they contacted the tenant to advise them of the cost of

repairs was \$268.79. The landlord then issued the tenant a cheque on July 18, 2011 for the amount of \$1,141.00 which in error, included an overpayment of \$110.00. The landlord stated that they had contacted this office and understood that they had 15 days to return the tenant's security deposit and that they had done so as they filed their application on July 21, 2011.

The tenant testified that the landlord did not say anything about repairs being required to the rental unit until July 18, 2011 and that the landlord did not return the security deposit within 15 days as outlined by the Act. The tenant stated that she had provided the landlord with her forwarding address by email on June 30, 2011 and that she believes the landlord was in receipt of the email prior to July 6, 2011.

The tenant stated that the landlord then only returned part of her security deposit and that she had never agreed to the landlord keeping any part of the security deposit. The tenant stated that move in and move out inspection reports were never completed therefore the landlord should not now be able to claim against the security deposit. The tenant stated that the scratches and gouges on the floor were simply normal wear and tear and she did not agree with the landlord's claim for damages.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing. The tenant sent the landlord her forwarding address by email and the landlord acknowledged receipt of the email on July 6, 2011. The landlord then made an application to this office on July 21, 2011 which was the last day, of the 15 day deadline per section 38(1)(d) of the *Act*.

As the tenant has not been successful in their application they are not entitled to recovery of the \$50.00 filing fee.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for damages.

Although there is an absence of move in and move out condition inspection reports, I accept the landlord's testimony and photographic evidence that the floors were new at the start of this tenancy and that the damage to the floors was a result of this tenancy. The tenant has also acknowledged in this hearing that the floors were damaged during

her tenancy. I therefore allow the landlord's claim and the landlords are entitled to a monetary order of \$268.79.

The landlord has returned \$1141.00 to the tenant which results in the landlord holding a balance of \$159.00. As the landlord is entitled to \$268.79, when the \$159.00 is subtracted from the amount of \$268.79 it results in a balance due to the landlords for \$109.79 and the landlords will be provided with a monetary order for this amount.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for **\$109.79** in damages. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$159.79**.

If the amount is not paid by the tenant(s), the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced 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: November 1, 2011.

Residential Tenancy Branch