



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlords: MND, MNSD and FF
Tenants: MNSD and v FF

Introduction

This hearing was convened on applications by both the landlords and the tenant.

By application of September 27, 2012, the landlords sought a monetary award for damage to the rental unit, recovery of their filing fee for this proceeding and authorization to retain the security deposit in set off against the balance owed.

By prior application of September 12, 2012, the tenant sought a Monetary Order for return of his security deposit in double on the grounds that the landlord did not return it or make application to claim against it within 15 days of the latter of the end of the tenancy or receipt of his forwarding address.

As a matter of note, the landlords had submitted a written request for an adjournment of this matter dated September 27, 2012, supported by copy of their travel itinerary, on grounds that he would be travelling internationally at the time of the hearing.

When the hearing commenced, I asked the landlord's agent if the landlord still wished an adjournment, but the agent stated he was prepared to proceed.

Issue(s) to be Decided

The landlords' application requires a decision on whether they are entitled to a monetary award for damage to the rental unit and authorization to retain the security deposit.

The tenants' application requires a decision on whether the tenant is entitled to a Monetary Order for return of his security deposit and whether the amount should be doubled.

Background and Evidence

This tenancy began on September 1, 2011 and ended on July 31, 2012, although the tenant had completed moving out by July 30, 2012. Rent was \$1,100 per month and the landlord holds a security deposit of \$550 paid at the beginning of the tenancy.

This matter is clouded by a vague and contradictory exchange of text messages in which the landlord stated after the fact that the tenant had missed a scheduled move-out condition inspection on August 15, 2012, to which the tenant had replied that there had been no such appointment.

The landlord subsequently did send the tenant a "Notice of Final Opportunity to Schedule a move-out condition inspection on September 23, 2012, but it was sent approximately six weeks after the tenancy had ended, a month after the tenant stated he had provided his forwarding address and two days after the tenant had made application for return of the deposit in double.

As to provision of his forwarding address, the tenant stated that he had sought the advice of the Residential Tenancy Branch on August 14, 2012, after the landlord had recanted an earlier promise to return the deposit.

The tenant was advised of the need to serve the landlords with his return address in writing. He said he did so on August 15, 2012 and submitted into evidence a picture of his letter with a house in the back ground which the agent confirmed was the landlord's home.

The tenant stated that when no one answered his knock on the door, he dropped the letter into the landlord's mail box. The landlords' agent stated that the letter had never been received.

As to the landlord's application, he has provided no evidence of his claim for damage to the rental unit.

Analysis

Claims in damages require that several factors be taken into account: the comparison of move-in vs. move-out condition inspection reports, whether damages are proven and attributable to the tenants, normal wear and tear, depreciation, and whether amounts claimed are proven and reasonable. Damage or loss due to non-compliance with the legislation or rental agreement requires the claimant to take reasonable steps to minimize the loss claimed. The burden of proof falls to the applicant.

As noted, in the absence of any evidence to support the landlord's claim for damage to the rental unit, his application is dismissed without leave to reapply.

As to the tenant's application, claims for return of a security deposit in double under section 38(6) of the *Act* require proof that the tenant has, on the landlords' formal request, participated in move-in and move-out condition inspections and proof that the tenant provided the landlord with a forwarding address, among others.

Settlement Agreement

As the hearing progressed, the parties arrived at the following consent agreement;

1. The tenant agreed to accept return of his bare security deposit of \$550 plus his \$50 filing fee in settlement of his claim;
2. The landlord's agent made promise that the \$600 would be sent to the tenant immediately on the landlord's return from his travels on or about December 18, 2012;
3. The parties agree that the tenant will be provided with a Monetary Order to perfect this agreement;
4. The parties concur that satisfaction of this agreement constitutes full and final settlement of the tenancy and neither may bring a further action against the other.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's copy of this decision is accompanied by a Monetary Order, enforceable through the Provincial Court of British Columbia for \$600.00 for service on the landlord.

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 28, 2012.

Residential Tenancy Branch