



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND
For the tenant: MNSD, MNDC

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 (the “Act”).

The landlords applied for compensation due to alleged damage to the rental unit.

The tenant applied for a return of her security deposit, doubled, and a monetary order for money owed or compensation for damage or loss.

At the outset of the hearing, neither party raised any concerns or issues regarding service of the applications or documentary evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Are the landlords entitled to monetary compensation due to alleged damage to the rental unit?
2. Is the tenant entitled to a monetary order comprised of her security deposit and further monetary compensation?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began April, 2011, ended on or about February 27, 2014, monthly rent began at \$800, was increased to \$900, and the tenant paid a security deposit of \$400 at the beginning of the tenancy.

It was also undisputed that the tenancy began with another landlord, and the current landlords bought the residential property shortly after the tenancy began.

The landlords confirmed holding the tenant's security deposit of \$400.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlords have not returned any portion of the tenant's security deposit.

Landlords' application-

The landlords' monetary claim is in the amount of \$300, for various items of alleged damage committed by the tenant, including a broken light, bathtub plug, broken kitchen cabinet lock and a ripped out cabinet, as well as for cleaning. There was not a breakdown of the value of each of the items claimed.

The landlords' relevant documentary evidence consisted of photographs of the claimed damage, taken at the end of the tenancy.

In response to my question, the landlord stated he could prove the state of the rental unit at the beginning of the tenancy through his professional inspection report prepared for the purchase of the home.

The landlord also submitted that he had attended the rental unit many times during the tenancy to make repairs.

In response, the tenant denied damaging the rental unit and that the items claimed by the landlord existed from the beginning of the tenancy.

The tenant further submitted that she and the female landlord met at the rental unit on the last day of the tenancy, and that they agreed the tenant did not damage the rental unit.

Tenant's application-

The tenant's monetary claim is in the amount of \$800, comprised of her security deposit of \$400, doubled to \$800.

The tenant submitted that she provided the landlords with her written forwarding address on February 27, 2014, on the check-out cleaning list, and that the landlord has not returned any portion of her security deposit.

The tenant's relevant documentary evidence included text message communication between the parties, the cleaning checklist, receipts and banking information.

In response, the landlords confirmed receiving the tenant's written forwarding address on February 27, 2014, the last day of the tenancy and not returning any portion of the tenant's security deposit.

Analysis

Landlord's application-

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances

before me, there is no evidence that the original landlord conducted a move-in inspection with the tenant and as a result, there is not move-in condition inspection report.

The landlords have additionally not submitted an independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection report or photograph at the start of the tenancy, I do not accept the landlords' claim for damage to the rental unit by the tenant.

Additionally, the landlord has not submitted any proof that they suffered a loss, as there were no receipts, invoices, or cancelled cheques.

I therefore find the landlords have not met their burden of proof and have not submitted sufficient evidence to prove their claim for damage of \$300 and I dismiss their application, without leave to reapply.

Tenant's application-

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence was that the tenancy ended and the landlords received the tenant's written forwarding address on February 27, 2014.

The landlords did file this present application for dispute resolution on or about March 7, 2014, but their application sought only a monetary order due to alleged damage, and did not claim against the security deposit. The details of the dispute as listed in the landlords' application also specifically did not mention a claim against the tenant's security deposit, or that this was their intention.

Therefore, I find the landlords did not file their application claiming against the tenant's security deposit within 15 days of February 27, 2014, or at all. Under section 38(6) of the *Act*, the landlords must pay the tenant double her security deposit.

I therefore grant the tenant's application seeking her security deposit of \$400, doubled, and I therefore grant the tenant a monetary award of \$800, comprised of her security deposit of \$400, doubled to \$800.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenant's application for monetary compensation is granted and I have granted her a monetary award of \$800.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$800, which I have enclosed with the tenant's Decision.

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

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: June 30, 2014

Residential Tenancy Branch

