



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Domo Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: MNSD, MNDC, FF
For the landlord: MNSD, MND, MNDC, 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 (the "Act").

The tenants applied for a return of their security deposit and pet damage deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenants' security deposit and pet damage deposit, a monetary order for alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

At the outset of the hearing, the evidence was discussed and the parties confirmed receipt of the other's evidence and application.

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 tenants entitled to a monetary order comprised of their security deposit and pet damage deposit, doubled, and for recovery of the filing fee paid for this application?
2. Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, for further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on April 1, 2012, ended on May 31, 2014, monthly rent was \$1500, and the tenants paid a security deposit and a pet damage deposit of \$750 each at the beginning of the tenancy. The landlord has retained both deposits.

The parties agreed that there is no move-in or move-out condition inspection report.

Tenants' application-

The tenants' monetary claim is in the amount of \$3000, comprised of their security deposit of \$750, doubled to \$1500, their pet damage deposit of \$750, doubled to \$1500, and for recovery of the filing fee paid for this application.

The tenants submitted that they provided the landlord with their written forwarding address on June 6, 2014, on a separate piece of paper attached to the landlord's door, and that the landlord has not returned any portion of their security deposit or pet damage deposit.

Landlord's response-

The landlord confirmed receipt of the tenants' written forwarding address on the date and manner mentioned by the tenants.

Landlord's application-

The landlord's monetary claim is in the amount of \$4059.45. The landlord did not provide a detailed calculation of their claim or provide the particulars as required under the Act, but submitted that there was a charge for a repair to the chimney flue and lost rent due to carpet damage.

The tenants confirmed that they understood the nature of the landlord's monetary claim and the hearing proceeded on that basis.

In support of their application, the landlord submitted there were two fireplaces in the rental unit, one a wood burning unit and the other containing a free standing gas fireplace. At one point during the tenancy, she noticed fire coming from the chimney with the gas fireplace, discovered that the tenants had installed a wood burning stove in the fireplace, and instructed the tenants to immediately stop using the wood stove, according to the landlord.

The landlord submitted that due to the tenants removing the gas fireplace and using a wood burning stove, the gas flue liner was destroyed, requiring a replacement. The landlord referred to the receipt and proposal she provided as proof that the flue was damaged and replaced.

As to the matter of loss of rent revenue due to damaged carpet, the landlord submitted that during the walk-through at the end of the tenancy, she did not notice a smell of cat urine, as the windows were open. During the rainy season when the windows were closed, the stench became obvious, leading to a loss of potential tenants, according to the landlord. The landlord submitted further that as she lost two months' rent, she eventually installed charcoal filters and is now seeking compensation for loss of rent revenue and for the costs of the charcoal.

The landlord's additional relevant documentary evidence included a statement from a realtor about the condition of the rental unit.

Tenants' response-

The tenants submitted that they were told of the availability of the wood burning stove by the landlord and were told to put the stove in the fireplace in question. The tenant submitted that the fireplace was surrounded by brick and masonry and had all the safety features, which should be a preventative for damage. The tenants submitted that when they were asked to stop using the wood burning stove, they complied and that they were unaware that there was a lining in the chimney.

As to the alleged cat stench, the tenants questioned by the landlord would not notice the smell for three weeks, and that the windows were left open for the walk through as they had just shampooed the carpet, as requested. The tenants submitted further that when

the landlord initially informed them of the issues with potential tenants, the landlord stated that she believed the potential tenants were exaggerating.

Landlord's reply-

The landlord denied telling the tenants to put the wood burning stove in the gas fireplace, and that when she told them of the wood burning stove, it was to supplement their heating.

Analysis

Tenants' application-

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

In the case before me, I find the tenants submitted sufficient evidence to show that the landlord received the tenants' written forwarding address on June 6, 2014, the tenancy ended on May 31, 2014, and therefore the landlord had until June 21, 2014 to file an application for dispute resolution claiming against the tenants' security deposit and pet damage deposit or to return the deposits in full; however, the landlord did not file their application for dispute resolution until July 30, 2014.

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 amount of their security deposit pet damage deposit.

I find the tenants are entitled to recovery of their filing fee paid for this application in the amount of \$50.

Due to the above, I grant the tenants' application for a return of their security deposit of \$750, doubled to \$1500, and pet damage deposit of \$750, doubled to \$1500, and their filing fee of \$50, for a total monetary award of \$3050.

Landlord's application-

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Chimney flue damage-

In this case, I considered whether or not the tenants were negligent, which is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

I find that the landlord submitted sufficient evidence to show that the tenants' unintentional misuse of the chimney resulted in a financial loss to the landlord, as I find the evidence sufficient that the liner in the chimney was required to be removed and replaced.

As to a monetary award, the landlord submitted a document showing payment of \$271.95 for the removal and disposal of the flue liner, which I find reasonable; however, as to the installation of the flue liner, I cannot determine that cost, as the only supporting documentation was a proposal for the work. Without proof of a payment or that she suffered a loss, I find the landlord has not supported her claim through her evidence.

Due to the above, I find the landlord is entitled to a monetary award for her loss for damage to the chimney flue, in the amount of \$271.95.

Lost rent due to carpet damage-

I find the landlord submitted insufficient evidence that she lost potential tenants due to the smell of the carpet or that the smell of the carpet, if any, was related to the tenants' cat. I was not convinced by the statement of the newly acquired property manager, as he only speculated as to the reason the landlord had not secured new tenants. I further was not convinced that the landlord took reasonable steps to minimize her loss, as there was no indication of when she put charcoal in the carpet, as she had relied on the tenants to do the same. The tenants were not made aware of an issue until at least three weeks after the tenancy ended and the tenants have denied that the smell existed.

I therefore find the landlord has not supported her claim for loss of rent revenue and dismiss the same, without leave to reapply.

I grant the landlord recovery of her filing fee of \$50, as she has had some measure of success with her application.

Due to the above, I find the landlord is entitled to a total monetary award of \$321.95.

Conclusion

The tenants have been granted a monetary award of \$3050.

The landlord has been granted a monetary award of \$321.95.

I set off the landlord's monetary award from the tenants' monetary award and grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the difference in the amount of \$2728.05, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the order may be served on the landlord and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from 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 13, 2014

Residential Tenancy Branch

