



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed January 8, 2015): MND, MNSD, FF

Tenants' application (filed January 15, 2015): MNSD

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for damages; to apply a portion of the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit.

The parties gave affirmed testimony at the Hearing.

The Landlord was not certain when she sent copies of her Notice of Hearing documents to the Tenants. The Tenant KV stated that she received the Notice of Hearing documents and copies of the Landlord's documentary evidence, by registered mail on January 28, 2015. KV submitted that the Landlord did not serve the Tenants with the documents within the 3 day time limit. While it is true that the Landlord did not serve the documents within the time limit required, I find that the Tenants received the documents 4 months before the Hearing date and KV did not wish to adjourn the matters in order to prepare for the Hearing.

The Tenants served the Landlord with their Notice of Hearing documents and copies of their documentary evidence, by registered mail, sent January 17, 2015. KV provided the a copy of the registered mail receipt and tracking numbers along with a print out from the Canada Post tracking system, which indicates that the documents were received by the Landlord on January 22, 2015.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for damage to the rental unit?
2. Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38(6) of the Act?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,595.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$797.50 on May 4, 2012.

A Condition Inspection Report was completed on June 1, 2012, and on December 22, 2014. The Tenants did not agree with the Landlord's assessment of damages at the end of the tenancy. The Tenants provided their forwarding address on the Condition Inspection Report on December 22, 2014.

The parties agreed that the tenancy ended on December 22, 2014.

On December 29, 2015, the Landlord returned a portion of the security deposit to the Tenant, in the amount of \$637.50. A copy of the cheque was provided in evidence. The Tenant has cashed the cheque.

The Landlord gave the following testimony:

The Landlord stated that the rental unit was 6 years old when the Tenants moved in. She stated that the previous occupants had scratched the wooden floors, but that the Tenants had also scratched the floors. The Landlord stated that the colour of the wood could not be matched and that the length of the hardwood boards was unusual. The Landlord stated that she was advised by a professional that the cost to repair the damaged caused by the Tenants would be more than \$400.00. The Landlord did not get a written estimate for the repairs.

The Landlord stated that she did not charge the Tenants for the full amount of the estimate to repair the damage, but decided to retain \$150.00 of the security deposit instead, to be fair to the Tenants.

The Tenant KV gave the following testimony:

KV testified that the Tenants were very careful with the hardwood floors during the tenancy and that the hardwood floors were damaged before the Tenants moved in to

the rental unit. She stated that the Landlord withheld \$150.00 of the security deposit without the Tenant's permission.

KV stated that after the Tenants received the partial refund of the security deposit, she e-mailed the Landlord to tell her that they did not agree that they had caused damage beyond reasonable wear and tear.

Analysis

Is the Landlord entitled to a monetary award for damage to the rental unit?

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenant pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the oral testimony and documentary evidence provided by both parties, I find that the Landlord did not provide sufficient evidence to support her claim.

The Condition Inspection Report indicates that when the Tenants took possession of the rental unit there were "marks/scratches" on the floors in the entry, living room, master bedroom and den. The Landlord provided a black and white photocopy of a photograph

of a section of scratched hardwood floor that was taken at the end of the tenancy; however, the Landlord did not provide a photograph of the same section of hardwood floor that taken at the end of the previous tenancy.

The Landlord did not provide a copy of an invoice or estimate for the cost of repairs to the hardwood floors. There is no reference on the one-page document that indicates the state of repair of the rental unit at the beginning of the tenancy.

For these reasons, I find that the Landlord did not satisfy element 2 or 3 of the test above and her Application is dismissed.

Are the Tenants entitled to a monetary award pursuant to the provisions of Section 38(6) of the Act?

A security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit **in full**, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, I find that the Landlord did not return the deposit in full, or apply against it, within 15 days of receipt of the Tenants' forwarding address and therefore I find that the Tenants are entitled to compensation under Section 38(6) of the Act. No interest has accrued on the security deposit.

I find that the Tenants have established a monetary award, calculated as follows:

Compensation (\$797.50 x 2)	\$1,595.00
Less amount the Landlord returned	<u>-\$647.50</u>
TOTAL	\$947.50

Conclusion

The Landlord's Application is **dismissed**.

I hereby provide the Tenants with a Monetary Order in the amount of **\$947.50** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) 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: June 01, 2015

Residential Tenancy Branch

