



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnsd, olc, ff

Introduction

The tenants apply for compensation for articles lost following this tenancy, for the return of the tenants' security deposit and pet damage deposit (doubled) , and recovery of the tenants' filing fee.

Both parties attended the hearing, and provided submissions. Both parties provided written materials, and confirmed receipt of the materials of the other party.

Issue(s) to be Decided

Are the tenants entitled to a monetary order as against the landlord relating to the loss of articles?

Are the tenants entitled to the return of the deposits, doubled?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

The parties had a prior hearing (file 832799), and the underlying facts for the present claim are in large part the same as the facts of that prior claim. In the decision of that claim from April 22, 2015, the Arbitrator provided background information, some relevant portions of which are adopted for the purposes of this hearing, as follows.

On October 16, 2013 the parties entered into a tenancy agreement in writing that provided that the tenancy would commence on November 1, 2013 and continue on a month to month basis. The rent was \$1300 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$650 and a pet damage deposit of \$150 for a total of \$800 at the start of the tenancy.

At the end of November 2015 the tenants gave the landlord written notice they would be vacating the rental unit on December 31, 2015.

On December 8, 2015 the tenant was disturbed by a slow leak in the bedroom. The leak got progressively worse over the next 5 days. During that period the tenant made 8 calls to the landlord but the landlord failed to response. On or about December 13, 2015 the ceiling collapsed releasing vermiculite and asbestos into the master bedroom and throughout the rental unit.

On December 15, 2015 the tenant contacted an environmental clean up serviced and their tests confirmed the presence of asbestos in the vermiculite and gave a quotation of \$18,000 to complete the abatement process. The landlord testified he intended to demolish the house.

The prior arbitrator determined that the landlord was responsible for the tenants' reasonable losses. He found the landlord failed to respond in a prompt and necessary fashion to deal with this emergency. He found that the tenants had suffered losses to two types of belongings. One type of belongings, if properly remediated, could be returned to the tenant without the risk of contamination. The second type were to be disposed.

With respect to the first type of belongings, the arbitrator ordered that the landlord retain the services of an environmental control contractor specializing in asbestos risks and that contractor was to remediate the tenants' belongings so that they could be returned to the tenants without contamination. Those belongings were to be remediated and returned to the tenants by May 20, 2015. The arbitrator further ordered that if the landlord failed to return the tenants' belongings by May 20, 2015 the tenant was at liberty to file another application seeking a monetary order for the loss of those belongings.

The tenants were also given liberty to re-apply for the recovery of their security deposit, once they had provided the landlord with their forwarding address in writing and waited 15 days.

The tenant now makes claim for the value of his lost belongings. He alleges they were never remediated, as ordered. As is made clear in the present claim by the landlord's written statement and evidence, the house was remediated from asbestos on August 30, 2015 by 3D Environmental Groups Ltd.. The landlord's written materials do not indicate that the tenants' articles were ever remediated, and the landlord testified he could not recall if they were remediated. The landlord submits the male tenant was called to pick up his belongings, but he never came. The tenant testified he was never advised to pick up his articles. He was alerted by his former neighbours that his things had been moved out into the yard.

The male tenant provided estimates of the depreciated value regarding the articles he lost, based upon old photographs, and memory. He had earlier stored more detailed information on a computer, which he kept in storage for many months, but which no longer operated when he retrieved it. He testified that in some respects, such as for medial supplies, his claim is far less than that actual value. The landlord's representative contends the tenant has provided insufficient proof of his claim, and has provided no receipts, no third party estimates, and no brand names or model numbers.

The tenant provided a copy of a letter given to the landlord May 4, 2015 that had his new forwarding address. The landlord denies receiving this letter.

Analysis

I find that the landlord has failed to comply with the Order in 832799 that required him to remediate and return the tenants belongings by May 20, 2015. I have no doubt that had the landlord fulfilled this order, he would have had clear memory of having done so, and would have supporting records. The records provided indicate only that the house was remediated. Accordingly, the tenant is entitled to be compensated for the loss of the value of these articles.

The tenant bears the responsibility of proving and quantifying this loss on a balance of probabilities. In many respects, I consider the estimates of the tenant to be reasonable, and for the most part they are the best evidence before me, as the landlord has provided no contrary evidence. On the other hand, as pointed out by the landlord, it should not have been difficult for

the tenant to provide better details as to the brand or model number of his printer scanner, and I accept the landlord's testimony that a printer can be purchased for as little as \$30.00. That portion of the tenants' claim was \$180.00, but I award only \$30.00. I also accept the landlord's submission that the tenants' claim for the \$1,000 cost of a storage locker should have been supported by receipts. This portion of the tenant's claim is therefore denied. The balance of the tenant's claim for compensation for his articles is awarded, and in total the sum of \$4,643.50 is awarded for loss of articles.

Regarding the security deposit and pet damage deposit, in most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). I accept that the landlord received the tenant's written forwarding address on May 4, 2016. The deposits which totaled \$800.00 were never returned to the tenants, however.

There is no evidence that any statutory grounds extinguish the tenants' right to claim the deposit. I find under these circumstances the tenants entitled to double the deposit, which is \$1,600.00.

As the tenants are largely successful with this claim, the tenants are also awarded recovery of the filing fee of \$100.00.

The sums awarded to the tenant total \$6,343.50.

Conclusion

The landlord must pay the sum of \$6,343.50 to the tenants.

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: February 14, 2017

Residential Tenancy Branch