Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDCT, MNSD, FFT
For the landlord: MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (Act).

The tenants applied for a monetary order for their security deposit and for recovery of the filing fee paid for this application.

The landlords applied for a monetary order for money owed or compensation for damage or loss and unpaid utilities and for recovery of the filing fee paid for this application.

Both tenants, both landlords, and the landlord's agent attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the applications or evidence. Both parties confirmed receipt of the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

I have reviewed the relevant evidence of the parties before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I

provide only a summary of that which is relevant regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for the amount of their security deposit and to recovery of their filing fee?

Are the landlords entitled to a monetary order for damage or loss and unpaid utilities and to recovery of their filing fee?

Background and Evidence

The written tenancy agreement states that this tenancy began on July 1, 2018, for a monthly rent of $1,550.00 and a security deposit being paid by the tenants in the amount of $775.00.

The landlords continue to hold the tenants' security deposit.

Tenants' application-

The tenants applied for double the amount of their security deposit, as they claimed the landlords did not return their security deposit in 15 days of the end of the tenancy.

The tenants said there was both a move-in and move-out inspection of the rental unit and a condition inspection report (CIR) prepared.

The tenants said that the landlords were provided their written forwarding address both in a letter by registered mail on June 18, 2019, and on the CIR, on June 29, 2019. The tenants submitted that they moved out of the rental unit on June 29, 2019. The tenants submitted that the landlords were obligated to return their security deposit by Sunday, July 14, 2019.

Landlords' response-

The landlord's agent submitted that he filed the landlords' application claiming against the tenants' security deposit for damages and unpaid utilities on July 15, 2019, which was within the required timeframe.

Landlords' application-

The landlords' monetary claim is $140.00 for carpet cleaning and $496.88 for reimbursement of monthly hydro.

In support of their application for carpet cleaning, the landlord's agent said that the carpet was professionally cleaned at the beginning of this tenancy and therefore, the tenants were required by clause 24 of the written tenancy agreement to professionally clean the carpet at the end of the tenancy.

In support of their claim for reimbursement of hydro, the landlord's agent referred to the written tenancy agreement showing that the tenants were obligated to pay $95.00 per month at the start of the tenancy, but that the hydro would be adjusted in April the following year.

The clause to which the landlord's agent refers is stated as follows:

> *Tenant will pay the Landlord $95.00 per month for BC Hydro-*
> *-Account to be adjusted in April of the Following Year (2019)*

The landlord's agent said that the hydro account is in the landlords' name and explained that the hydro is shared equally with the rental unit on the upper floor.

The landlord's agent said that the hydro was adjusted in April 2019, which reflected that the tenants used in excess of $95.00 per month.

The landlord's agent said the tenants were sent a statement of the annual hydro usage, and with it, a demand that they pay usage excess of $457.38, in a letter dated May 28, 2019. The landlords requested payment in full by June 1, 2019. The landlords also included a hydro statement, which was dated April 29, 2019.

The landlords submitted a copy of the May 28, 2019 demand letter and a copy of a follow-up demand letter, dated June 5, 2019.

I find it important to note that in the May 28, 2019, letter, the landlords wrote that the tenants' share of the tenants' monthly hydro cost going forward was to be increased from $95.00 per month to $134.50 per month, beginning June 1, 2019.

In the follow-up letter, the landlords wrote, "…we advised you that, as per the tenancy agreement, your adjusted hydro amount for the coming year would rise to $134.50 a month, ½ of the new equal billing, beginning June 1, 2019."

Tenants' response-

The tenants submitted that they were shocked to be sent a letter demanding a payment of $457.38, within 4 days. The tenants further submitted that there had been no mention from the landlords that they would have to make arrears payments and that they received no hydro bills during the tenancy, meaning they had no opportunity to monitor their consumption.

The tenants submitted that if there was to be an increase or decrease, it would be in April 2019, and because nothing was mentioned until the May 28, 2019 letter, the assumption was that the monthly hydro bill was to be the same.

As to the carpet cleaning bill, the tenants submitted that they left the rental unit in better condition than it was at the start of the tenancy. For instance, according to the tenants, the oven was not cleaned when they moved in and the shower head was damaged.

The tenants said they thoroughly vacuumed the carpet and checked for stains.

The tenants questioned whether the carpet was professionally cleaned prior to the tenancy, as they never received proof.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Tenants' application-

Under section 38(1) of the Act, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within

15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. 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.

In this case, I accept the tenants' evidence that the tenancy ended on June 29, 2019, as I find they vacated the rental unit that day and therefore, the 15th day after the tenancy ended on June 29, 2019 was July 14, 2019, which fell on a Sunday.

Section 25 of the *Interpretation Act* states that if the time for doing an act in a business office falls on a day the office is not open during regular business hours, the time is extended to the next day.

Under Rule 2.4, an application for dispute resolution may be submitted online, to the RTB, or through a Service BC office.

The RTB or Service BC offices are not opened for business on Sundays. The landlords were therefore required to file their application for dispute resolution by July 15, 2019, the next business day after July 14, 2019.

A review of the RTB records show that the landlords made their application at a Service BC office on July 15, 2019, which I find meets the deadline as set out above. The documents were forwarded to the RTB from Service BC on July 19, 2019, which I find is why the tenants were informed the landlords' application had not been made when they called to inquire.

I therefore find the tenants are not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application.

I will address the return of the tenants' security deposit at the conclusion of my consideration of the landlords' application.

Landlords' 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 results. Section 7(2) also requires

that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their claim on a balance of probabilities.

Carpet cleaning-

While I accept that the written tenancy agreement shows that if the carpet was new or professionally cleaned at the beginning of the tenancy, I find the landlords submitted insufficient evidence to prove the carpet was professionally cleaned at the beginning of this tenancy.

The tenants disputed that the carpet was professionally cleaned.

I find disputed oral evidence, without more from the applicant, fails to satisfy the landlords' burden of proof on a balance of probabilities.

I dismiss the landlords' claim for carpet cleaning, without leave to reapply.

Hydro annual adjustment-

I have read and reviewed the clause in the tenancy agreement regarding the tenants' obligation to pay $95.00 per month as quoted above and I find the clause vague and confusing.

I find the word "adjusted" in this clause does not define whether the monthly obligation will increase or decrease, how it is to be paid, or when a potential increase or decrease will go into effect going forward.

I find it reasonable to conclude that as the tenancy was for a fixed term ending on June 30, 2019, the monthly hydro obligation might possibly be increased or decreased effective the month following the end of the fixed term, or July 1, 2019. However, even that was not made clear by this clause.

The tenancy agreement as written does not require the tenants to pay a lump sum, as it just says "adjusted", and there is no mention made of the hydro being divided evenly between the upper and lower tenants.

I have also reviewed the landlords' written demand letter of June 5, 2019, and find the letter contains inaccuracies. For instance, I disagree that the written tenancy agreement states that the hydro would rise to $134.50 a month, ½ of the hydro, beginning June 1, 2019.

The term does not specify what happens going forward if the tenancy extended beyond April 2019.

The landlords could very well have avoided this situation by clearly setting out that the tenants were obligated to pay ½ of each hydro bill, and then give the tenants a copy of the monthly or bi-monthly billing statements, for reimbursement.

I find a term in the tenancy agreement which is vague and in favour of the maker, the landlords in this case, is not enforceable.

I therefore dismiss the landlords' claim for an annual adjustment of hydro in the amount of $496.88, without leave to reapply.

I likewise dismiss their request to recover the filing fee paid for their application.

Both applications-

As I have dismissed the landlords' application for the above stated reasons, I find the tenants are entitled to a return of their security deposit of $775.00.

I also grant the tenants recovery of their filing fee of $100.00.

I therefore grant the tenants a monetary order in the amount of $875.00, comprised of their security deposit of $775.00 and their filing fee of $100.00.

Should the landlords 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 landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The tenants' application for a return of the security deposit and recovery of their filing fee has been granted.

The portion of the tenants' application for a monetary award for double their security deposit has been dismissed, as I find the landlords filed their application within the required time frame.

The landlords' application has been dismissed.

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 7, 2019

Residential Tenancy Branch