



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for damages to the rental unit as to recover the filing fee for this proceeding. The Landlord also applied to keep all or part of a security deposit.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for damages and if so, how much?
2. Is the Landlord entitled to keep all or part of the Tenant's security deposit?

Background and Evidence

This month to month tenancy started on August 1, 2005 and ended on October 31, 2008. Rent was \$670.00 per month. The Tenant paid a security deposit of \$310.00 at the beginning of the tenancy.

The Landlord claimed that he arranged to do a move out condition inspection report with the Tenant on October, 14, 2008, however the Tenant was busy moving. As a result, the Landlord claimed he arranged another appointment for October 16, 2008. The Landlord argued that the Tenant was not around on that day and therefore a condition inspection couldn't be done. The Landlord said he received the Tenant's forwarding address in writing and keys on October 26, 2008. The Landlord did a move out condition inspection report without the Tenant on October 28, 2008 and forwarded a copy to the Tenant to sign. The report showed that the rental unit required carpet and drape cleaning.

The Landlord said there was no written tenancy agreement, however, it was a policy of the Landlord that the carpets and drapes were to be cleaned at the end of a tenancy. The Landlord also said cleaning was necessary to sanitize the carpets and drapes even if they were not soiled. The Landlord argued that although the Tenant had extinguished his right to claim the security deposit, the Landlord only sought to keep \$70.00 of it.

The Tenant claimed that there was nothing in writing that required him to clean the drapes and carpets at the end of the tenancy. The Tenant agreed that he was busy moving on October 14, 2008 and could not do the condition inspection that day, however, he said he did not recall a further inspection being arranged for October 16, 2008. The Tenant also argued that he disputed the report the Landlord sent him dated October 28, 2008 because carpet cleaning was not part of the list but had been added in handwriting by the Landlord. The Tenant also said that the carpet was new at the beginning of the tenancy but was still clean at the end of the tenancy. He admitted that the carpet had not been cleaned at any time during the tenancy. The Tenant also claimed that the drapes were clean although old and worn.

Analysis

Section 20 of the Regulations to the Act states what information must be included in a condition inspection report. The Landlord's condition inspection report is very general and does not comply with this section and therefore I find it is invalid and of little evidentiary value with respect to the condition of the rental unit.

Sections 24 and 36 of the Act state that a Tenant's right to a security deposit is extinguished if a Tenant fails to participate in a condition inspection after the Landlord has provided him with two opportunities **as prescribed**. Section 17 of the Regulations to the Act states that if a Tenant fails to participate on the first opportunity, the Landlord must propose a second opportunity to the tenant by providing the tenant with a notice in the approved form (see RTB Form 22, Final Opportunity to Schedule a Condition Inspection). It is only after these steps are taken that a Landlord may do the condition inspection report without the Tenant.

Sections 24 and 36 of the Act also state that a Landlord's right to make a claim against a security deposit is extinguished if the Landlord does not offer a Tenant 2 opportunities to do a condition inspection as prescribed. In this case, the Landlord admitted that he did not give the Tenant a written notice for the 2nd opportunity to participate in a condition inspection. I find that the Landlord could have left a notice on the rental unit door on October 16, 2008 to schedule a further time for the condition inspection before the end of October, 2008 but failed to do so. Consequently, I find that the Landlord has not complied with s. 35 of the Act.

I also disagree with the Landlord's argument that the Tenant's right to claim against the security deposit was extinguished because he failed to sign the condition inspection report. Section 36 of the Act says a tenant's right is only extinguished if he doesn't participate not if he doesn't sign the report. Furthermore, s. 35(4) requires a tenant to sign the report, if it contains the information set out under s. 20 of the Regulations.

Section 37(2) of the Act says that at the end of a tenancy a Tenant must leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Generally this will mean that a Tenant is responsible for periodic cleaning of the carpets and for cleaning them at the end of a tenancy longer than one year (see RTB Policy Guideline #1 – Responsibility for Residential Premises). This is not the case, however, for window coverings which only need to be clean when the tenant vacates unless the tenant or another occupant smoked in the premises. In the absence of any evidence that the Tenant smoked during the tenancy, I find that the Tenant is not responsible for cleaning the drapes. I do find however, that the Tenant is responsible for the cost of carpet cleaning. I find that the amount of \$50.00 is reasonable for this expense.

As the Landlord has been partially successful in this matter, he is entitled to recover one-half of the filing fee for this proceeding. Although the Landlord's right to claim against the security deposit is extinguished, s. 38(4), 62(3) and 72 of the Act permit the director to offset damages if it is necessary to give effect to the rights and obligations under the Act. Consequently, I order the Landlord to keep \$75.00 of the Tenant's security deposit in partial payment of the damage award and to return the balance of the security deposit plus accrued interest to the Tenant as follows:

Security deposit:	\$310.00
Accrued interest:	<u>\$10.78</u>
Subtotal:	\$320.78
Less: Carpet Cleaning:	(\$50.00)
Filing fee:	<u>(\$25.00)</u>
TOTAL OWING:	\$245.78

Conclusion

A Monetary Order in the amount of **\$245.78** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.