

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for damages, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

This hearing was also scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for return of the deposit paid and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Preliminary Matter

The tenant testified that she did not receive the landlord's evidence package. I determined that the landlord had served the tenant effective May 22, 2009 with the evidence sent via registered mail to the tenant's address. The tenant testified that she only checks her mail once each week.

Issue(s) to be Decided

Is the Landlord is entitled to a monetary Order for damages to the rental unit; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Is the tenant entitled to return of the deposit and to recover filing fee costs from the landlord, pursuant to sections 38 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy commenced on October 1, 2008. A deposit of \$200.00 was paid on August 2, 2008. The tenancy terminated effective March 31, 2009. The tenant paid monthly rent of \$850.00.

During the hearing the parties agreed to the following:

- That the tenant provided the landlord with notice to end tenancy effective March 31, 2009
- That the rental unit was furnished and included bedding, towels and kitchen supplies

- That the tenant returned the keys to the landlord on March 28 and returned on April 3, 2009 expecting to obtain the deposit paid to the landlord
- That on April 3, 2009 the tenant sent the landlords registered mail requesting return of the deposit, providing the forwarding address

Landlord Claim:

The landlord states that the tenant left the rental unit in a dirty state and that when the tenant came to the rental unit on April 3 they took the tenant into the rental unit to point out the deficiencies. The landlord did not complete a move-in or move-out condition inspection with the tenant.

The landlord is claiming the following:

Damages/Cleaning:	
48 hours cleaning @ \$10.00/hour	480.00
Damaged Sheets	44.79
Damage to towels/facecloths	98.00
Damage to maple seat of chair	30.00
Missing Items:	
Extension cord	4.00
Coffee jar/coffee	7.00
20 hangers	12.00
Lint roller	2.00
Fry pans	12.00
Coffee mugs	4.00
Coffee maker	16.00
Total	709.79

The landlord provided photographic evidence showing some items (cookie, chips, piece of bread and clothing) left on the floor; some pieces of food left on the carpet; some stains on the bed skirt and sheets; 4 towels, 4 hand towels and 3 face cloths damaged by bleach and a chair with some damage to the seat.

The landlord states that the tenant did not use the kitchen fan which resulted in grease covering the walls and cupboards. The landlord testified that the sofa pillows were dirty, that the bathroom sealer and tub mat were stained by hair dye and that a number of items were missing from the rental unit.

The landlord evidence alleges a number of deficiencies from dried food on surfaces, stains on tables, nail polish on furniture, food in the rug, frying pans that were dirty and burnt, a roasting pan, an oven tray too dirty to use again and brown stains in the coffee maker. The landlord did not provide photographic evidence supporting these alleged deficiencies. The landlord testified that 48 hours of cleaning included steam cleaning the carpets and washing all the walls and surfaces. The landlord evidence indicates that they normally expect to spend 6 hours cleaning after a tenant moves.

The tenant testified that she spent 8 hours cleaning the rental unit prior to moving out and that she disagrees with the landlord's claim. The tenant states that on April 3 she did go into the rental unit with the landlord who showed her the items she had left on the floor and that she feels the landlord is exaggerating the cleaning that they completed.

Tenant Claim:

The parties agreed that the landlord has been served with a written request dated April 3, 2009 by the tenant requesting return of the deposit paid by the tenant. The written request included the tenant's forwarding address.

Within fifteen days of receipt of this request the landlord filed for dispute resolution.

Analysis

Landlord's Claim:

The landlord claims that 48 hours of cleaning were required. I find that the evidence and testimony provided by the landlords fails to support a claim requiring 48 hours of cleaning. However; I have accepted that the tenant may have cleaned for 8 hours prior to moving but that the tenant did not completely clean the rental unit to the point where it would be ready for new tenants. I accept the landlord evidence that the 6 hours of cleaning the landlord usually accepted as their responsibility would have been sufficient to prepare the rental unit for new tenants. The absence of move-in and move-out condition inspections also causes me to find, on the balance of probabilities, that a claim for 48 hours of cleaning is not supported.

The landlord has not provided an inventory list detailing all items included in the rental unit at the start of the tenancy. There is no evidence of the tenant having signed an inventory, acknowledging the contents and the condition of those contents. In order to claim missing and damaged items it is reasonable to expect that the parties would, at the start of a tenancy, have an agreed-upon inventory of the contents. In the absence of any record of the rental unit contents and an inspection completed with both parties present I find that the claim for missing and damaged items is dismissed without leave to reapply.

Section 35(2) of the Act requires a landlord to provide a tenant with two opportunities to complete an end of tenancy condition inspection; this did not occur. Section 38(5) of the Act determines that a failure to offer a tenant at least two opportunities for an end of tenancy inspection, as required by section 36(2) of the Act, extinguishes the right of a landlord to claim against the deposit.

I have considered the landlord claim for costs and make the following determinations:

Damages/Cleaning:	Claimed	Allowed
48 hours cleaning @ \$10.00/hour	480.00	0
Damaged Sheets	44.79	0

Damage to towels/facecloths	98.00	30.00
Damage to maple seat of chair	30.00	0
Missing Items:		
Extension cord	4.00	0
Coffee jar/coffee	7.00	0
20 hangers	12.00	0
Lint roller	2.00	0
Fry pans	12.00	0
Coffee mugs	4.00	0
Coffee maker	16.00	0
Total	709.79	30.00

There is no evidence that the tenant intentionally damaged the sheets and I find that normal wear and tear can be expected and that accidents can happen; therefore the claim for new sheets, the only item supported by a receipt, is dismissed. I have accepted the tenant testimony that a towel was damaged by bleach and have awarded the landlord costs.

I find that the landlord application has only limited merit, and that the landlord is not entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution. I find that the tenant's application has merit and that the tenant is entitled to filing fee costs.

I find that the landlord must return the deposit, plus interest of \$201.25 to the tenant.

I have appended referenced sections of the Act, after the conclusion of this decision.

Conclusion

Section 72 of the Act allows a dispute resolution officer to set-off amounts owed between parties. I Order the landlord to return the deposit of \$201.25 to the tenant; less the \$30.00 owed to the landlord for damaged towels.

I find that the tenant has established a monetary claim, in the amount of **\$251.25**, less \$30.00, which is comprised of the deposit plus interest and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for the balance of **\$221.25**. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The tenant has claimed a monetary order of \$400.00. As the landlords applied for dispute resolution within 15 days of the served written request for return of the deposit the tenant is not entitled to return of double the deposit.

Dated May 28, 2009.

Dispute Resolution Officer

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

Consequences for tenant and landlord if report requirements not met

24 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord has complied with section 23 (3) [*2 opportunities for inspection*], and

(b) the tenant has not participated on either occasion.

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

- (a) the landlord complied with section 35 (2) [*2 opportunities for inspection*], and
- (b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [*2 opportunities for inspection*],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Condition inspection: end of tenancy

35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit

(a) on or after the day the tenant ceases to occupy the rental unit, or

(b) on another mutually agreed day.

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(3) The landlord must complete a condition inspection report in accordance with the regulations.

(4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(5) The landlord may make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit