



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

The tenant has made application for a monetary Order for return of the security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. The landlord has made application for a monetary Order for the cost of damages, to retain the deposit paid and to recover the filing fee from the tenant for the cost of this 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 affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

Is the tenant entitled to return of double the deposit paid to the landlord?

Is the landlord entitled to costs for cleaning and painting?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2008 and terminated on April 30, 2009. The tenant paid a security deposit of \$490.00 on February 1, 2008. There was no written tenancy agreement and the landlords did not complete move-in and move-out condition inspection reports with the tenant.

On May 18, 2009 the tenant provided the Landlord with a written forwarding address, sent by registered mail. The Tenant testified that the deposit has not been returned. The landlord confirmed receipt of the written request on May 22, 2009. The landlord testified that they believed that service to the tenant on May 12, 2009 of their accounting of what the tenant owed for cleaning was sufficient notice of their claim being made against the tenant. The landlords applied for dispute resolution on June 17, 2009.

The landlord testified that the rental unit was advertised as a non-smoking rental and that throughout the tenancy the tenant smoked. The landlord stated that the tenant and her guests would smoke on the deck and the smoke would enter the rental unit, resulting in the need for painting and the washing of walls at the end of the tenancy.

The landlord testified that shortly after she moved in the tenant was given verbal permission to repaint the rental unit, with agreement that at the end of the tenancy she would paint the unit back to the original colours. The landlord stated the tenant failed to repaint and that the smell of smoke has resulted in the need for repainting.

The parties agree that they did walk through the unit together at the end of the tenancy but a written inspection report was not completed. The tenant testified that the landlord pointed out some cobwebs in one window sill and that she had thoroughly cleaned the unit prior to move-out. There is no agreement between the parties in relation to repainting of the unit at the end of the tenancy.

The landlord submitted estimates for cleaning costs in the sum of \$300.00 and painting in the sum of \$500.00. This work has not been completed.

Analysis

Section 38 of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord has failed to comply with 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) the landlord **must** pay double the deposit. (My emphasis added.)

I have no evidence before me that a move-in condition inspect or move-out condition inspection report was completed as required by the Act. Further, the landlord confirmed that they have not repaid the deposit as requested in writing by the tenant. Therefore, I find that the tenant is entitled to return of double the \$490.00 deposit paid to the landlord.

I have not accepted the landlord's testimony that the rental unit required cleaning or repainting. The rental unit was painted just over one year ago, with the landlord's permission. The lack of any written agreement in relation to repainting fails to support the landlord's claim that the tenant was to paint at the end of her tenancy. The landlord testified that early in the tenancy they were aware that the tenant smoked and that, on several occasions they had been in the rental unit. There was no evidence presented which indicates the tenant was given any warning that she was to cease smoking on the property or that smoking was a material term of the tenancy.

The landlord failed to complete a move-in condition inspection report and completed a casual walk-through of the unit with the tenant at the end of the tenancy. There is no evidence that items requiring further cleaning, outside of the cobwebs, were brought to

the tenant's attention. The landlord stated that the tenant was told the outside deck required cleaning and that the unit smelled of smoke.

Further, the tenant moved out at the end of April and the landlord has testified that neither the painting nor cleaning has been completed. The burden of proof that the rental unit requires cleaning and repainting in the sum of \$800.00 and verification of those costs, falls to the landlord. In the absence of a condition inspection report and evidence that the costs have been incurred and are required, I am not satisfied that the landlord's claim is valid and dismiss the claim for cleaning and repainting without leave to reapply.

The landlord is holding a deposit, plus interest, in the sum of \$496.73.

I find that the tenant's application has merit, and I find that the tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$1,036.73, which is comprised of double the deposit paid in the sum of \$980.00, interest of \$6.73 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 **\$1,036.73**. 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.

A copy of the Guide for Landlords and Tenants in British Columbia has been included with this decision for each party.

A copy of relevant sections of the Act is appended to this decision.

Dated July 31, 2009.

Dispute Resolution Officer

Condition inspection: start of tenancy or new pet

23 (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b) a previous inspection was not completed under subsection (1).

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

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

(5) 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.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

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.

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.

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.