



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding. The Landlord also applied to keep the Tenant's security deposit.

The Landlord said he served the Tenant with the Application and Notice of Hearing by registered mail on April 14, 2009, however he claimed that he no longer had the receipt or the tracking number. Based on the Landlord's evidence, I find that the Tenant was served as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(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 the Tenant's security deposit?

Background and Evidence

This tenancy started on November 1, 2008 and was to expire on May 30, 2009 however it ended on March 31, 2009 when the Tenant moved out. Rent was \$1,000.00 per month plus \$25.00 for parking. The Tenant paid a security deposit of \$500.00 at the beginning of the tenancy.

The Landlord said the tenancy agreement contains a liquidated damages clause in which the Tenant agreed to pay \$500.00 if she ended the tenancy early. The Landlord also sought to recover expenses set out on a "Security Deposit Refund" form for carpet and drape cleaning, for cleaning a fireplace and miscellaneous cleaning expenses. On a Notice to Landlord dated February 28, 2009, the Tenant signed her consent to deduct amounts from the security deposit for carpet and drape cleaning. The Landlord also said the Tenant was responsible under the tenancy agreement for professionally cleaning the carpets and drapes at the end of the tenancy. The Landlord provided a copy of a move out condition inspection report dated April 11, 2009 which is signed by the Tenant.

The Landlord also claimed that the Tenant had arrears of rent of \$50.00 but could not say for what month and agreed that the amount could also be for late fees. The Landlord did not provide a statement of accounts for the Tenant.

Analysis

I find that there is insufficient evidence to support of the Landlord's claim for cleaning expenses. The Landlord said the drapes and carpets were cleaned by the Landlord at the end of the tenancy but he provided no receipts in support of those expenses. The Landlord also did not provide a receipt or any other corroborating evidence in support of the fireplace cleaning and miscellaneous cleaning expenses which he said related to cleaning appliances. Furthermore, the move out condition inspection report shows that everything was in good condition at the end of the tenancy. Consequently, this part of the Landlord's claim is dismissed.

In the absence of any financial documentation, I also find that there is insufficient evidence in support of the Landlord's claim for unpaid rent and that part of his claim is dismissed.

With respect to liquidated damages, Clause #1 of the tenancy agreement states:

"if the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option treat this tenancy agreement at an end and in such event, the sum of \$500.00 shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty. The payment by the Tenant of the said liquidated damages to the Landlord is agreed to be in addition to any other remedies available to the Landlord."

RTB Policy Guideline #4 says that in order for a liquidated damages clause to be enforceable, it must be a genuine pre-estimate of loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable." It also says that if the clause is determined to be valid, the tenant must pay the sum even where the actual damages are negligible or non-existent."

The Landlord claimed that the liquidated damages were intended to compensate him for the time spent getting the rental unit cleaned so it could be shown to potential tenants and for administrative and advertising costs in connection with re-renting the rental unit. In the circumstances, I find that the liquidated damages claimed by the Landlord are a reasonable pre-estimate of damages and award him that amount. As the Landlord has only been partially successful in this matter, he is entitled to recover one-half of the filing fee or \$25.00.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

I order the Landlord pursuant to s. 38(4) of the Act to keep the Tenant's security deposit plus accrued interest in payment of the damage award. The Landlord will receive a monetary order for the balance owing as follows:

| | |
|-------------------------|-----------------|
| Liquidated damages: | \$500.00 |
| Filing fee: | <u>\$25.00</u> |
| Subtotal: | \$525.00 |
| Less: Security deposit: | (\$500.00) |
| Accrued interest: | <u>(\$1.11)</u> |
| Balance owing: | \$23.89 |

Conclusion

The Landlord's application is allowed in part. A monetary order in the amount of **\$23.89** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an order of that court.

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: July 09, 2009.

Dispute Resolution Officer