



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for an Order of possession, compensation for damages to the rental unit, 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.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

As the tenant has moved out the landlord does not require an Order of possession.

As the details of the dispute indicate that the landlord is seeking compensation for damages in the sum of \$700.00 I accepted this portion of the claim and found that the landlord made a clerical error in failing to check the correct portion of the Application.

The tenant submitted a CD of video footage as evidence. This CD was blank and could not be viewed.

There was some dispute in relation to the evidence each party had submitted, but the parties agreed that they had each had sufficient time to reference the evidence of the other and the hearing proceeded on the basis that all evidence would be considered.

The landlord and tenant each had copies of photographs submitted as evidence by the landlord. At my direction the landlord submitted a copy of these photographs for my reference as I had only copied photographs to refer to during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$700.00 for damages to the rental unit?

May the landlord retain the deposit paid in satisfaction her claim for compensation?

Is the landlord entitled to filing fee costs?

Background and Evidence

This tenancy consisted of two fixed-term agreements. The first commenced in July 2009 and was followed by a second fixed term that was to end April 1, 2010. The tenant paid a \$700.00 deposit on July 1, 2009. On approximately November 15, 2009 the landlord moved into the rental unit with the tenant. The landlord owned the home and the landlord and tenant commenced sharing the kitchen.

No move-in or move-out condition inspections were completed.

The landlord received the tenant's forwarding address when she move out at the end of January 2010, and within fifteen days the landlord applied for dispute resolution claiming against the deposit paid.

During the hearing the tenant agreed to pay the landlord \$100.00 for a damaged screen. A further attempt to have the parties' settle the remaining items claimed was unsuccessful.

The landlord is claiming \$700.00 related to the following costs:

Smoke damage to the garage	476.25
Broken screen	35.64
	1158.6

The garage was smoke damaged as a result of the tenant smoking in the garage. The tenant admits that they smoked inside of the garage, with the doors opened and that any damage previously existed. The landlord stated she noticed the damage one month after she moved into the rental unit with the tenant. The landlord submitted photographs which show some damage to a wall in the garage.

The landlord claimed that the tenant caused damage to the floor in a bathroom, broke a screen, and left holes in the walls and a water stain in the ceiling. The landlord last painted the rental unit approximately 4 years ago.

Outside of the damaged screen, the tenant stated that the remaining damage was due to normal wear and tear or previously existed.

The tenant stated that she did meet with the landlord on February 1, 2010, at which point the landlord had told her they were “all square.”

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

As the landlord is the owner of the rental unit and chose to move into the unit in mid-November, 2009, and share the kitchen with the tenant, I find that from November 15, 2009 onward jurisdiction under the Act did not exist. I base this decision on section 4 of the Act that determines that any tenancy where accommodation in which a tenant and the owner share bathroom or kitchen facilities does not fall under the jurisdiction of the Act.

In relation to the claims made by the landlord, I find that, in the absence of a move-in or move-out condition inspection that the landlord has failed to provide a preponderance of evidence that the damages claimed were caused by the tenant. The tenant has agreed to pay for the damaged screen, but all other portions of the claim are disputed.

Prior to moving into the rental unit the landlord did not complete an inspection to determine what, if any damages existed and then, some weeks later, noticed damages that she determined to be the fault of the tenant. There is no evidence before me that, even if the tenant had caused some of these claimed damages, that they did not occur after mid-November, during a period of time when the Act did not apply.

Therefore, based upon the absence of a preponderance of evidence that any damages were caused by the neglect of the tenant prior to November 15, 2009, when jurisdiction under the Act ceased, I find that the landlord is entitled to \$100.00 offered by the tenant for repair of the screen and that the balance of the landlord's claim for compensation is dismissed.

Residential Tenancy Branch policy suggests that when a landlord makes a claim against the deposit, any amount remaining owed to the tenant will be Ordered paid to the tenant. Therefore, as the landlord is holding a deposit in the sum of \$700.00, I find that the landlord may retain \$100.00 for the screen. As the landlord's Application has

merit, I find that the landlord may also retain the \$50.00 filing fee. I find that the balance of the deposit in the sum of \$550.00 must be returned forthwith to the tenant.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$150.00, which is comprised of \$100.00 damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$150.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of \$550.00. 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.

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: March 31, 2010.

Dispute Resolution Officer