Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of double a security deposit; a monetary Order for money owed or compensation for damage or loss; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to the return of double the security deposit paid in relation to this tenancy and to recover the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Tenant and the Landlord agreed that this tenancy began on September 01, 2009; that the Tenant paid a security deposit of $1,200.00 on August 21, 2009; that the tenancy ended on April 30, 2010; that a Condition Inspection Report was not completed at the beginning or the end of this tenancy; that the Landlord did not file an Application for Dispute Resolution claiming against the security deposit; and that the Landlord repaid a portion of the security deposit, in the amount of $84.72, on May 21, 2010.

The Landlord and the Tenant agree that the Tenant sent the Landlord an email, dated April 15, 2010, in which the Tenant provided the Landlord with a forwarding address. A copy of the email was submitted in evidence.

In the email dated April 15, 2010, the Tenant gave the Landlord written authorization to deduct the cost of the water bill from January 11, 2010 to April 30, 2010 from the security deposit. No payment amount was specified at this time as the bill had not yet been issued. The Landlord submitted a copy of the water bill for the period between

January 14, 2010 and April 30, 2010, in the amount of $164.64. The Landlord stated that he retained $164.64 from the security deposit for the water charges.

In the email dated April 15, 2010, the Tenant gave the Landlord written authorization to deduct the cost of the "final move-out cleaning services". No payment amount had been specified as the cleaning had not yet been completed. The Tenant stated that they made this agreement because they did not believe they would have time to clean the unit at the end of the tenancy. He stated that when the tenancy ended they did have time to clean the rental unit and the unit was left in clean condition.

The Landlord stated that the rental unit was not left in clean condition and he had the rental unit professionally cleaned. The Landlord submitted a copy of a cleaning invoice for this service, in the amount of $407.50. The Landlord stated that cat feces was subsequently found under the stairs in the rental unit and that he hired professional cleaners to clean that area on May 18, 2010. The Landlord submitted a copy of a cleaning invoice for this service, in the amount of $75.00. The Landlord stated that he retained $482.50 from the security deposit for cleaning costs.

The Landlord stated that he also retained $468.14 from the Tenant's security deposit in compensation for painting the rental unit. The Landlord did not have written authorization from the Tenant to deduct the cost of painting from the Tenant's security deposit. The Landlord argued that the cost of painting was part of the cleaning costs incurred at the end of the tenancy. The Landlord submitted a copy of an invoice in the amount of $468.14.

Analysis

On the basis of the undisputed evidence provided, I find that the Tenant paid a security deposit of $1,200.00; that the tenancy ended on April 30, 2010; and that the Tenant provided the Landlord with a forwarding address on April15, 2010, via email.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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.

In these circumstances I find that the Tenant gave the Landlord written authorization to deduct the cost of the final water bill from the security deposit. Although the amount of the water bill was not known when the Tenant granted this authorization, it is clear to me that the Landlord had permission to retain the full amount of the final bill. On this basis, I find that the Landlord had written authorization to retain $164.64 from the Tenant's security deposit, as that was the amount of the final water bill.

In these circumstances I find that the Tenant also gave the Landlord written authorization to deduct cleaning costs from the security deposit. Although the amount of the cleaning costs were not known when the Tenant granted this authorization, it is

clear to me that the Landlord had permission to retain cleaning costs.

Although the Tenant stated that they had cleaned the rental unit at the end of the tenancy and cleaning was not needed, there is no evidence to show that the Tenant revoked the written authorization to retain cleaning costs. As the Tenant did not revoke the authorization to retain cleaning costs, the onus is now on the Tenant to establish that the cleaning costs claimed by the Landlord were unreasonable.

Given that the Landlord submitted receipts to establish that a cleaner was paid $482.50 for cleaning the rental unit, which seems a reasonable expense, given that the Landlord contends that the rental unit was not clean at the end of the tenancy, and given that the Tenant has submitted no evidence to corroborate his statement that the rental unit was clean at the end of the tenancy, I find that the cleaning costs of $482.50 do not appear unreasonable. On this basis, I find that the Landlord had written authorization to retain $482.50 from the Tenant's security deposit, as that was the amount paid for cleaning the rental unit at the end of the tenancy.

I find that the Landlord had written authorization to retain $647.14 and I find that the Landlord had an obligation to process the remainder of the security deposit, in the amount of $552.86, in accordance with section 38(1) of the *Act*. Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, the Landlord had until May 15, 2010 to either repay the remaining $552.86 or to file an Application for Dispute Resolution.

I find that the Landlord did not have written authorization from the Tenant to deduct painting costs from the security deposit paid by the Tenant. I do not accept the Landlord's argument that painting should be considered a cost of cleaning, as I find them to be two entirely different claims. It is entirely possible that a rental unit that is left in pristinely clean condition can require painting because the walls were damaged during the tenancy. In reaching this conclusion I note that the cleaner is not the person who painted the rental unit, which further confirms my belief that the two claims are distinct and separate. As the Landlord did not have written authorization to retain $468.14, he did not return the $468.14, and he did not file an Application for Dispute Resolution to retain this amount, I find the Landlord failed to comply with section 38(1) of the *Act* when he retained $468.14 from the Tenant's security deposit.

The evidence shows that the Landlord mailed a cheque to the Tenant, in the amount of $84.72, on May 21, 2010, which represented a refund of a portion of the Tenant's security deposit. To be in compliance with section 38(1) of the *Act,* this refund was to have been made by May 15, 2010. As the refund was not paid within the timelines established by legislation, I find that the Landlord did not comply with section 38(1) of the *Act* when the refund was made after May 15, 2010.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act* when the Landlord retained $468.14 without lawful authority and the Landlord did not refund the outstanding portion of the security deposit within the timelines established by legislation, I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

I find that the Tenant has established a monetary claim of $1,718.14, which is comprised of double the security deposit, plus $50.00 as compensation for the cost of filing this Application for Dispute Resolution, less the $84.72 that has been returned, less the $647.14 that the Landlord had written authorization to retain. Based on these calculations. I grant the Tenant a monetary Order in the amount of $1,718.14. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: November 01, 2010.

Dispute Resolution Officer