



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which 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.

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

During the hearing the landlord was asked to submit the original copy of the condition inspection report to the Residential Tenancy Branch by December 13, 2010; a copy was received on that date. The landlord was also asked to send the tenants a copy of the report.

Issue(s) to be Decided

Is the tenant entitled to return of the deposit paid?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2008; the tenants moved out on June 30, 2010. A deposit in the sum of \$582.50 was paid on July 23, 2008.

The tenants have applied for return of double the deposit paid.

A move-in condition inspection was completed, as was a move-out inspection report, which was signed by the male tenant on June 30, 2010. The move-out report included the tenant's written forwarding address. The tenant stated that a copy of this report was not given to them and the landlord could not be sure if a copy was mailed to the tenants.

The tenant stated that after the move-out inspection her spouse did come home with a list of deductions that the landlord wished to make from the deposit paid. The male tenant was not available to testify at this hearing and the tenant present could not say what agreement, if any, had been made in relation to the deposit paid and damages owed.

The landlord stated they would have claimed against the deposit if the male tenant had not agreed to the deductions. The inspection report submitted after the hearing, upon my request, indicated the following estimated costs:

- Painting, no amount indicated;
- \$125.00, Carpet cleaning;
- \$20.00, Blind replacement;
- \$15.00 light bulbs; and
- \$200.00 full cleaning; totaling \$360.00.

A notation also indicated \$60.00 for cabinet wear and tear.

The inspection report included a statement that read, in part: "I understand upon vacating the above unit any cleaning required will be charged against my security deposit. Any repair or replacement costs resulting from tenant misuse will also be deducted." The tenant signed immediately below this portion of the report. The tenant also initialed the portion of the report with indicated that the suite had been inspected upon vacating and he was in agreement with the assessment made.

The portion of the report that appears to have been completed at the time the inspection was completed indicated that the tenant was willing to negotiate some sort of settlement that would include him leaving the washer and dryer that was owned by the tenants; the washer and dryer were not left.

The inspection report included notations in a red pen, that appeared to have been entered after the inspection, which outline charges in the sum of \$578.02; \$200.00 for cleaning; \$140.00 for carpet cleaning; \$8.02 for light bulbs and \$230.00 for painting and repairs.

The female tenant stated that she knows her husband would not have agreed to the deductions indicated on the report.

The landlord's inspection reports are in triplicate; the page that is given at the end of a tenancy to the tenant was missing; leading the landlord to believe that the agent at the time had supplied the male tenant with a copy of the report.

The landlord is currently holding a deposit plus interest in the sum of \$586.37.

Analysis

There is no evidence before me that the landlord supplied the tenants with a copy of the move-out condition inspection report, as required by section 18 of the Residential Tenancy Regulation. The landlord stated that the copy which they routinely give to tenants was missing, indicating the tenants had likely been given a copy; the tenants denied having received one.

The move-out condition inspection report indicated that the tenants provided their written forwarding address on the June 30, 2010, inspection report.

Section 38(1) 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 does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case the landlord submitted that there was agreement to deductions from the deposit paid to cover damages to the rental unit.

If I were to accept the condition inspection report submitted as evidence, upon my request, it appears that the male tenant, who was absent at this hearing, accepted charges estimated to be \$360.00 for carpet cleaning, blinds, light bulbs and cleaning of the suite. The report indicated that charges totaling \$578.02 were ultimately incurred by the landlord; which included items not agreed to at the time the male tenant signed the report.

I find, on the balance of probabilities, that the male tenant agreed on June 30, to the damages and estimated costs for the carpet, blinds, light bulbs and cleaning costs. The tenant signed acknowledging the state of the unit and the costs listed on the report. Therefore, I find that the tenants accepted charges in the sum of \$360.00 at the time the report was completed and that they are entitled to the balance owed in the sum of \$226.37.

I have based this decision on the evidence before me and in the absence of the male tenant who was not available at this hearing to testify as to his intention at the time he

signed the inspection report. I find, on the balance of probabilities, particularly in light of the submission that the washer and dryer were offered as some sort of compensation to the landlord, that the landlord and tenants had reached an agreement for costs to be deducted from the deposit paid and that the male tenant clearly agreed to the amount indicated for damages on the inspection report.

I find that the tenant's application has merit, as the landlord had yet to return the balance of the deposit owed and that the tenants are entitled to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Conclusion

I find that the tenants have established a monetary claim, in the amount of \$276.37, which is comprised of the balance of the deposit owed to the tenants plus \$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 tenants a monetary Order for \$276.37. 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: December 13, 2010.

Dispute Resolution Officer