

DECISION

Dispute Codes:

MNSD, FF

Introduction

The conclusion of this decision was amended on December 29, 2010 to correct an obvious arithmetical error in the original decision.

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

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 to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on December 01, 2008; that the Tenant was required to pay monthly rent of \$695.00 during the latter portion of the tenancy; that the Tenant paid a security deposit of \$347.50 on November 15, 2008; that the Tenant left the keys and his forwarding address in the rental unit on May 30, 2008; and that \$154.77 of the security deposit was returned to the Tenant.

The Agent for the Landlord and the Tenant agree that a Condition Inspection Report was completed on November 28, 2008. The parties agree that the parties agreed to meet on May 30, 2010 at 1100 hours for the purposes of completing a condition inspection.

The Agent for the Landlord stated that she completed the Condition Inspection Report on May 30, 2010 at 1100 hours, in the absence of the Tenant. She stated that he and his mother came to the office at 1115 hours on May 30, 2010, at which time she showed him the report she completed. The Condition Inspection Report, which was submitted as evidence, shows that the stove and oven needed cleaning. She stated that he would not agree with her assessment that the stove/oven needed cleaning and that his mother refused to return to the rental unit to view the stove/oven.

The Tenant stated that when he arrived at the office at 1115 hours on May 30, 2010, the Agent for the Landlord handed him the Condition Inspection Report and told him the report had been completed. He acknowledged that the parties argued about the condition of the stove and oven but that he was not given the opportunity to return to the rental unit for the purposes of assessing the condition of the rental unit.

The Agent for the Landlord stated that the Landlord hired someone to clean the rental unit. The Landlord submitted a receipt to show that this individual spent 3.5 hours cleaning the rental unit, for which the Landlord is seeking compensation in the amount of \$49.00. The individual stated that she cleaned the windows and window tracks, the stove and range hood, behind the fridge and stove, the bathroom tub and toilet, 3 light fixtures, and the kitchen sink.

The Condition Inspection Report that was completed at the end of the tenancy makes no mention of the windows and window tracks needing cleaning, the range hood needing cleaning, the areas behind the fridge and stove needing cleaning, the bathroom tub and toilet needing cleaning, 3 light fixtures needing cleaning, or the kitchen sink needing cleaning. The Agent for the Landlord stated that she did not notice these areas needed cleaning when she inspected the rental unit at the end of the tenancy and they were pointed out to her by the person who was hired to clean the rental unit.

The Landlord submitted photographs of the rental unit that show the stove and oven required cleaning; that the tracks of a sliding glass door needed cleaning; that a drawer needed wiping out; that the caulking around the bathtub needed cleaning; and that light fixtures needed cleaning. In my view, the photographs do not demonstrate that the kitchen sink needed a significant amount of cleaning. No photographs of window tracks, the range hood, windows, the toilet, or the area behind the fridge and stove were submitted.

The Tenant stated that the rental unit was thoroughly cleaned at the end of the tenancy and that the photographs submitted in evidence by the Landlord were not representative of the condition of his rental unit at the end of the tenancy. The Tenant speculates they were taken in a different rental unit.

The Agent for the Landlord stated that she was present when the photographs were taken on May 31, 2010. The Landlord submitted a copy of a written declaration, dated August 10, 2010, from a woman who declared that she took photographs of the rental unit after the Tenant moved out of the rental unit and that the photographs accurately depict the condition of the rental unit.

The Agent for the Landlord stated that the Landlord hired someone to clean the drapes in the rental unit. The Landlord submitted a receipt to show that this individual cleaned two sets of drapes, for which she charged \$25.00. The Agent for the Landlord stated that the drapes were not clean at the end of the tenancy and that she originally noted on the Condition Inspection Report that the drapes did not require cleaning and that she

subsequently changed that entry. The Landlord submitted no photographs to establish that the drapes needed cleaning.

The Tenant contends that the drapes were clean at the end of the tenancy and did not require cleaning.

The Agent for the Landlord stated that the Landlord hired someone to clean the carpets in the rental unit. The Landlord submitted a receipt to show that the carpets were cleaned, at a cost of \$73.50. The Agent for the Landlord stated that the carpets were not clean at the end of the tenancy. The Condition Inspection Report that was completed at the end of the tenancy by the Agent for the Landlord notes that the carpets were clean at the end of the tenancy. The Landlord submitted no photographs to establish that the carpets needed cleaning.

The Tenant stated that he had the carpets professionally cleaned at the end of the tenancy, although he did not submit evidence to corroborate this statement.

The Agent for the Landlord stated that the Landlord is no longer seeking to recover the cost of photographs used in evidence at these proceedings.

Analysis

After hearing the statements of both parties regarding the cleanliness of the rental unit and after viewing the photographs of the rental unit, I find that the rental unit needed additional cleaning. In reaching this conclusion I relied more heavily on the photographs of the rental unit than on the description of the rental unit that was provided by each party, as I find that evidence to be the most independent and reliable.

Although the Tenant speculated that the photographs were not taken in his rental unit, I find that they do accurately depict the condition of the rental unit at the end of the tenancy. In reaching this conclusion I relied on the Agent for the Landlord's testimony, who stated she was present when the photographs were taken on May 31, 2010 and on the written declaration of the person who took the photographs after the Tenant had vacated the rental unit.

In determining that the photographs accurately depict the condition of the rental unit, I was influenced by the fact that the Landlord has a receipt to show that it paid \$49.00 for general cleaning in the rental unit. The person who cleaned the unit specified the areas which were cleaned, which was consistent with the photographs submitted in evidence.

For these reasons I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. Based on the photographs submitted in evidence I find that the Landlord's claim of \$49.00 for cleaning was reasonable and I find that the Tenant must compensate the Landlord in this amount.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the drapes required cleaning. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Landlord's statement that the drapes required cleaning and that refutes the Tenant's evidence that they did not require cleaning. In reaching this conclusion, I was further influenced by the fact that the Agent for the Landlord noted that the drapes were clean when she initially completed the Condition Inspection Report. On this basis, I dismiss the Landlord's application for compensation for cleaning the drapes.

I find that the Landlord has submitted insufficient evidence to show that the carpets required cleaning at the end of the tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as photographs, that corroborates the Agent for the Landlord's statement that the carpets required cleaning and that refutes the Tenant's evidence that they did not require cleaning. In reaching this conclusion, I was further influenced by the fact that the Agent for the Landlord noted that the carpets were clean when she completed the Condition Inspection Report. On this basis, I dismiss the Landlord's application for compensation for cleaning the carpets.

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

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$99.00, which is comprised of \$49.00 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I hereby authorize the Landlord to retain \$99.00 from the security deposit paid by the Tenant, which fully satisfies this monetary claim.

As the Landlord only has authorization to retain \$99.00, I find that the Landlord is obligated to return the remaining \$248.50 of the deposit that was paid, plus interest of \$0.67, less the \$154.77 that was returned on June 10, 2010. I therefore find that the ~~Tenant~~ Landlord owes the ~~Landlord~~ Tenant ~~\$4.60~~ \$94.40 and I grant the ~~Landlord~~ Tenant a monetary Order in that amount. In the event that the ~~Tenant~~ Landlord does not comply with this Order, it may be served on the ~~Tenant~~ Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The monetary Order that was granted to the Landlord in error on October 26, 2010, in the amount of \$4.60, is hereby set aside and is of no force or effect.

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: October 26, 2010.

Dispute Resolution Officer