



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD

Introduction

This hearing dealt with an application by the landlord requesting to retain the tenant's security deposit as the landlord alleges that the tenant has damaged the rental unit. Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

This tenancy began on September 1, 2009 for a fixed term ending effective August 31, 2010. The monthly rent as \$2,225.00 and the tenant paid a \$1,112.50 security deposit on August 5, 2009. The landlord did not complete a written move in condition inspection with the tenant.

The tenant requested permission to look for a new tenant to assign or sublet the tenancy because he could not complete the one year lease. With the permission of the landlord the tenant hired a property management company to assist with seeking a new tenant to assume the tenancy.

The landlord provided a letter from the property management company confirming that they were hired by the tenant, with the landlord's permission, and also confirming that attempts to find a new tenant were unsuccessful due to the level of the monthly rent. The landlord gave permission to lower the rent. The landlord also did not want any pets which the property management company indicates was a barrier to finding a new tenant.

The tenant ultimately found a new occupant to sublet the rental unit effective July 1 to August 31, 2010. This individual completed the term of the tenant's tenancy and then

was allowed to rent the unit for an additional month to the end of September 2010. The landlord submitted that he observed a cat and a dog in the rental unit in September 2010 and the property management company observed a cat in the rental unit in July 2010.

The landlord submitted that contrary to the tenancy agreement and the rental advertisement, the tenant sublet the rental unit to an occupant who had pets and as a result the rental unit was damaged. The landlord has estimated the following costs as a result of this breach:

Estimated cost to have the carpets cleaned	\$373.62
Estimated cost to clean the rental unit	\$425.00
Estimated cost to repair broken window in door	\$325.00
Cost of unpaid water bill	\$31.18
Total	\$1,454.80

In the absence of written move in and move out condition inspections reports the landlord relies on his oral testimony to substantiate his claims. The landlord also submitted that the estimate from the cleaning company provides a description and in the description it is noted that there is animal hair and a urine smell in the rental unit. The landlord also submits that the estimate from the carpet cleaning company also indicates that there will be sanitizing for urine smell.

The tenant denied any knowledge that the occupant he sublet the rental unit to had a pet and he questioned why the landlord would claim these damages and yet agree to continue to rent the unit to this individual after the tenancy ended on August 31, 2010.

The tenant stated that he was aware of the broken window in the door and that the landlord was also informed. The tenant stated that there was no negligence or damage caused by the sub-tenant, rather the window appeared to break due to temperature or weather changes.

The tenant denied that the rental unit was left unclean and stated that when he was in the rental unit after the tenancy ended the unit was clean and there was no urine smell or any evidence of damage caused by pets.

The tenant stated that he believed that any outstanding utilities had been paid but he would certainly cover any outstanding cost presented by the landlord.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The *Act* requires that a landlord and tenant complete written move in and move out condition inspection reports so that the condition of the rental unit is established at the start and the end of a tenancy. The *Act* places the onus on the landlord to schedule and conduct the inspections.

In the circumstances before me the landlord has extinguished the right to claim any damage against the tenant by failing to set up the move in and move out condition inspections as required by section 25 and 35.

In the absence of the move in and move out condition inspections, I must determine based on the evidence provided by the landlord whether the rental unit suffered any damage as a result of a breach of the tenancy agreement by the tenant. The landlord has only provided his oral testimony that he observed pets at the rental unit and that he smelled urine in the unit. The landlord submitted that it is common knowledge that pet dander would make its way into the ducting and that this should be cleaned. However, the landlord also stated that the comments on the estimates provided from the cleaners and the carpet cleaning companies support his own observations.

I find that I cannot accept the landlord's submission. The landlord has not provided any compelling or persuasive evidence to demonstrate that the rental unit was left unclean or required any cleaning. I am not persuaded by the descriptions provided on the quotes provided by the landlord. It is uncertain whether the comments in the estimate for cleaning the rental unit were based on the cleaners being in the rental unit at the end of the tenancy, or whether the comments are based on third hand description provided by the landlord. I also note that both estimates provided by the landlord are dated several months after the tenancy ended.

I am also not persuaded that the rental unit requires the ducts to be cleaned because a pet may have been temporarily in the rental unit. I am only satisfied by the evidence that a cat was seen in the rental unit during the months of July and August and the evidence does not establish that a pet was there all the time. Regardless, I find that having an animal in the rental unit for such a short duration would result in this expense. I find that this is a standard not required by the *Act*.

I also find that the glass in the lower door was not damaged as a result of any action or neglect of the tenant. I accept the tenant's evidence that the window apparently broke due to a change in temperature or some other cause and that the landlord was immediately informed. The landlord did not provide any other evidence to establish that the tenant caused the damage.

I do accept that the tenant is responsible for the cost of cleaning the carpets at the end of the tenancy consistent with policy guideline 1. This is a reasonable expectation; however, I do not accept that the tenant is responsible for any cost to deodorize the carpets. Therefore, I only accept an estimated cost of \$280.00 as an amount the tenant is responsible for to have the carpets cleaned based on 75% of the quote provided by the landlord. I also accept that there is the sum of \$31.18 owed for utilities.

I deny all the other costs claimed by the landlord. I find that the landlord is entitled to retain the sum of **\$311.18** from the tenant's security deposit of \$1,112.50, leaving an outstanding balance owing to the tenant in the amount of **\$801.32**.



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I grant the tenant a monetary Order for this sum. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is granted in part. The landlord is entitled to retain the sum of \$311.18 from the tenant's security deposit. The tenant has been granted a monetary Order for remaining balance owed in the amount of \$801.32.

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: January 12, 2011.

Residential Tenancy Branch