



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities, for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenant for the cost of this application. The "Details" portion of the Application also includes an application for carpet and drapery cleaning.

An agent for the landlord company attended the hearing, gave affirmed testimony, and provided evidence in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on September 16, 2010, the tenant did not attend the conference call hearing.

All information provided and testimony heard has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on January 1, 2010 and ended on August 31, 2010. Rent in the amount of \$912.00 per month was payable in advance on the last day of the previous month. On December 20, 2009 the landlord collected a security deposit from the tenant in the amount of \$456.00 as well as a key deposit in the amount of \$40.00.

The landlord's agent testified that on August 16, 2010 the tenant gave written notice to vacate the rental unit effective September 18, 2010. The landlord's agent then saw a co-tenant in the elevator on August 31, 2010 who indicated that the tenant was in the process of moving that day. She further testified that a conversation took place between the landlord's agent and the tenant, and the tenant stated that it was unreasonable to pay another month's rent.

The landlord's agent testified that the tenant had not given written notice in advance of the day that rent is payable as required by the *Act*, and the landlord claims one month of rent, \$912.00, \$25.00 for a late payment fee as set out in the tenancy agreement, and the \$50.00 to recover the filing fee. The landlord still retains the security deposit and key deposit, although the keys were returned to the landlord's agent on August 31, 2010.

The landlord's agent further testified that the tenancy agreement, a copy of which was provided in advance of the hearing requires the tenant to clean the carpets and drapes and provide evidence of having done so, or request for and pay the landlord the cost for those services. The landlord claims \$70.00 for cleaning the carpets and \$80.00 for cleaning the drapes and has provided receipts to substantiate that claim.

The parties completed a move-in and a move-out condition inspection report which was provided in advance of the hearing. All items noted on the reports show that the unit was left in a clean condition, however beside "carpet" in the living room section of the report at move-out, \$70.00 has been written in, and beside "drapes" in the living room section of the report \$80.00 has been written in. The landlord's agent and the tenant both signed the move-out condition inspection report, however the tenant did not indicate that he agreed with the report.

Analysis

I find that the tenant was served with the Landlord's Application for Dispute Resolution and notice of hearing documents in accordance with Section 89 of the *Residential Tenancy Act*.

The *Residential Tenancy Act* also states that:

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, I must find that if the tenant wanted to vacate the rental unit, the tenant was required to give written notice to the landlord or an agent before the last day of the month in order to be relieved of any responsibility for the following month. That did not happen. Therefore I find that the landlord has established a claim for \$912.00 in unpaid rent and \$25.00 for a late payment fee. The landlord is also entitled to recovery of the \$50.00 filing fee.

With respect to the landlord's application for recovery of the amounts for cleaning the carpets and drapes, I refer to the *Residential Tenancy Act* which states as follows:

- 5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Further,

37 (2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
- (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I therefore find that the landlord and the tenant entered into a contract which is contrary to the *Act* and is of no effect as it relates to cleaning the carpet and drapes. The unit was otherwise left in clean condition and undamaged as evidenced by the move-out condition inspection. Further, the landlord has not claimed damages, and has not established that the unit was left in a state beyond reasonable wear and tear. The landlord's application for recovery of carpet and drapery cleaning is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, I order that the landlord retain the security deposit of \$456.00 as well as the \$40.00 for the key deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$491.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: January 20, 2011.

Residential Tenancy Branch