



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

The landlord company was represented at the hearing by an agent, and the tenant also attended the conference call hearing. Both parties gave affirmed testimony, provided written evidence in advance of the hearing to the Residential Tenancy Branch and to each other, and were given the opportunity to cross examine each other on their testimony. All testimony and evidence provided 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 a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Is the tenant entitled to return of the pet damage deposit or security deposit?

Background and Evidence

This month-to-month tenancy began on September 29, 2008 and ended on October 31, 2009. Rent in the amount of \$900.00 was payable in advance on the 1st day of each month. On September 9, 2008 the landlord collected a security deposit from the tenant in the amount of \$450.00.

The landlord's agent testified that the landlord company received written notice from the tenant on October 2, 2009 of her intention to vacate the rental unit. The landlord's agents took the position that they would not need to charge the tenant for another month's rent even though the landlord was entitled to under the *Act*, because there was a lot of interest in renting those town homes.

The landlord's agent further testified that the rental unit could not be re-rented in the condition that it was left in by the tenant, and was not re-rented until November 20, 2010. She stated that the unit smelled of urine from the dog that the landlord did not know the tenant had. She further stated that she lost a prospective renter who looked at the suite, but refused to enter into a tenancy agreement because of the smell. Other than the odour, the tenant left the unit very clean and undamaged. The landlord's agent also provided an invoice and a letter from the carpet cleaning company that described the carpets as saturated with urine along the edges of all rooms and around the edges of where furniture sat and stains in the open areas of carpeted rooms after he returned with a black light to investigate, as well as an invoice to prove that the carpets had been cleaned prior to this tenancy. She stated that the carpet was treated, re-treated and cleaned, and the cost was \$367.50.

The landlord claims carpet cleaning in the amount of \$367.50, 19 days of rent in the amount of \$570.00 and \$450.00 for a pet damage deposit that the landlord did not collect from the tenant. When questioned why the landlord ought to be entitled to a pet damage deposit after a tenant vacated the unit, the agent replied that had the tenant paid it, she would have kept it. The landlord's total claim is \$1,387.50.

The landlord's agent further testified that the tenant had contacted her and she told the tenant she could pick up her security deposit. When she arrived, the agent took the tenant to the rental unit so that she could experience the foul smell herself. A total of \$84.23 of the security deposit was returned to the tenant on November 24, 2010. She further stated that the tenant agreed to the carpet cleaning bill.

The landlord's agent also testified that the tenant did not provide a forwarding address in writing, although she admits that the tenant moved into another unit of the landlord,

and the same agent for the landlord who conducted the move-out condition inspection provided and signed the new tenancy agreement at the end of this tenancy.

A move-in condition inspection report was completed at the beginning of the tenancy, but a different form was used for the move-out condition inspection. Copies of both inspections were provided in advance of the hearing, but no signature of the tenant appears on the move-out condition inspection.

The tenant testified that she was told by the previous agent for the landlord that the carpet cleaning company that cleaned the carpet prior to the commencement of this tenancy prepared an invoice and was paid, but the cleaner didn't actually do any cleaning and was fired. The tenant disputes that the carpets were cleaned prior to the tenancy commencing. She further testified that her dog had thrown up on the carpet a couple of months before the end of the tenancy and she had the carpet cleaned at that time, but was not able to provide an invoice or receipt to substantiate that testimony. Also, the move-in condition inspection report shows that the carpets were stained at the commencement of the tenancy.

The tenant also pointed out on the move-in condition inspection report a notation that states the tenant had a dog, and therefore the landlord's evidence that the landlord did not know the tenant had a dog is untrue.

The tenant also testified that she provided the landlord with her forwarding address in writing on July 16, 2010, but she was not returned any portion of her security deposit until November 24, 2010. She also testified that she moved from this rental unit into another unit of the same landlord, and the same agent for the landlord who conducted the move-out condition inspection provided and signed the new tenancy agreement at the end of this tenancy.

The tenant further testified that she called the landlord for return of the security deposit several times from November 1, 2010 to November 24, 2010, and she did not receive a copy of the move-out condition inspection report, nor did she know one had been completed in writing until she received the landlord's evidence package prior to this hearing. The tenant claims double the amount of the security deposit less the \$84.23 that was returned to her, and \$50.00 for the filing fee.

Analysis

The *Residential Tenancy Act* states that:

35 (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

And further,

36 (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35 (2) [2 opportunities for inspection],
- (b) having complied with section 35 (2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, I find that the tenant did not abandon the rental unit. I further find that the parties did a walk-through of the unit, but the landlord failed to comply with section 36 (2) (c), and therefore I must find that the landlord's right to claim against the security deposit for damage to the rental property is extinguished.

The *Act* further states that:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), and security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And further,

38 (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) 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, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

I find that the tenant did not agree in writing that the landlord retain any portion of the security deposit. I further find that the landlord did not have an order from the director that states that the landlord may retain the amount.

Section 38 goes on to say that:

38 (6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

In the circumstances, I find that the landlord was provided with the tenant's forwarding address in writing when the tenant rented another suite from the landlord and signed a tenancy agreement for that rental unit, and may well have provided it in July, 2010, although the tenant was not able to prove that and the landlord disputed that evidence.

The *Act*, as set out above, prohibits the landlord from claiming against the security deposit, but does not preclude the landlord from making a claim for damages. I further find that the tenant has failed to establish that the carpets were cleaned. Where a tenant resides in a rental unit for more than a year, or has a pet that is not caged, or if the tenant smokes inside the rental unit, the tenant ought to have the carpets cleaned.

I find that the landlord has failed to comply with the *Act* as it relates to the security deposit, that the landlord had the tenant's forwarding address in writing on or before November 1, 2010, and applied for dispute resolution on January 27, 2011. Therefore, I find that the tenant has established her claim of double the amount of the security deposit, in the amount of \$900.00, interest in the amount of \$2.10, less the \$84.23 that was returned to her, for a total of \$817.87.

With respect to the landlord's claim for carpet cleaning, I find that the landlord has established a damage claim in the amount of \$367.50. The landlord's claim for a monetary order for a pet damage deposit is without basis and dismissed without leave to reapply.

I further find that the landlord has established a claim for loss of revenue in the amount that is equivalent to 19 days of rent, or \$570.00.

Where I find that both parties owe money to the other, the amounts may be set off from one another, and I find that the difference in the awards above is \$119.63 due to the landlord.

Since both parties have been partially successful with their claims, I decline to order that either party recover the filing fee from the other for the cost of these applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord, pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$119.63. 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: February 18, 2011.

Residential Tenancy Branch