



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for unpaid rent, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant applied requesting return of the deposit paid and filing fee cost recovery from the landlord.

The tenant's application included a claim for compensation; the tenant stated that he only wishes return of the deposit paid.

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 evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

There was no evidence submission before me in support of the landlord's monetary claim.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage or loss in the sum of \$1,843.10?

Is the tenant entitled to return of the deposit paid?

May the landlord retain the deposit?

Is either party entitled to filing fee costs?

Background and Evidence

This 6 month, fixed-term tenancy commenced in February, 2010. A deposit in the sum of \$635.00 was paid.

The tenant gave the landlord written notice ending the tenancy effective the last day of the fixed term and mover out on July 30, 2010. The tenant submitted that the previous building manager walked through the apartment, said everything was fine and that the keys were returned during the week following the end of tenancy.

The tenant confirmed he did not provide the landlord with his forwarding address in writing; it was given over the telephone and the address was used by the landlord for service of their application, made in advance of the tenant's claim.

The tenant stated he has repeatedly attempted to retrieve his deposit and the landlord has yet to return it.

The landlord testified that cleaning, carpet cleaning, key costs and paint costs were incurred due to the failure of the tenant to properly clean the unit. The tenant stated he hired a cleaner and that he was told the unit was in good condition by the agent of the landlord at the end of the tenancy.

The landlord did not dispute the tenant's testimony that there were multiple agents who worked at the building over a very short period of time, which resulted in a lot of confusion as to who the agent was at any given time.

The landlord confirmed there was a record of notice given by the tenant ending his tenancy, but that information does not appear to have been given to the head office.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of any evidence supporting the costs claimed by the landlord and, based upon the testimony of the tenant, I find that the landlord's claim is dismissed.

I find that the tenant is entitled to return of the deposit paid in the sum of \$635.00.

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

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$685.00, which is comprised of the deposit and \$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 tenant a monetary Order for the balance of \$685.00. 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: April 28, 2011.

Residential Tenancy Branch