



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND; MNDC, MNSD; FF

Introduction

This is the Landlord's application a Monetary Order for damages to the rental unit and compensation for damage or loss; to retain the security deposit in partial satisfaction of its monetary claim; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The rental unit is a house. The Tenant moved into the rental unit on June 30, 2008, joining other tenants who lived in the house. The other tenants paid a security deposit in the amount of \$600.00 on April 30, 2007. A move-in condition inspection report was conducted on May 1, 2007.

There were a number of changes in occupants from May 1, 2007 to the date the Tenant moved out of the rental unit on February 28, 2011. These occupants had an agreement between themselves with respect to the security deposit and how any damages or potential refund would be proportioned between them.

The Tenant and other tenants entered into a new tenancy agreement with the Landlord on November 18, 2009. No condition inspection was conducted and the \$600.00 deposit transferred from the earlier tenancy.

A condition inspection was conducted on March 2, 2011, a copy of which was provided in evidence.

The Landlord's agents stated that the rental unit was unreasonably dirty at the end of the tenancy and that the carpets and blinds were not cleaned. In addition, the Landlord's agents submit that the Tenant broke two windows. The Landlord is seeking a monetary award, calculated as follows:

Cost to clean the rental unit at the end of the tenancy	\$360.00
Cost of shampooing the carpets	\$224.00
Cost of cleaning blinds	\$159.49
Cost of replacing two broken windows	<u>\$254.25</u>
TOTAL	\$997.73

The Landlord provided copies of receipts for the cleaning and a quote for the replacement of the windows. The Landlord's agents testified that the windows have been replaced for the cost quoted. The Landlord provided photographs of the rental unit in support of its claim.

The Tenant submits that there were no condition inspections performed when she moved in and that therefore the Landlord's right to claim against the security deposit has been extinguished. The Tenant denies breaking the windows. The Tenant did not dispute that the carpets and blinds were not cleaned prior to her moving out, or that the rental unit was not left in a reasonably clean condition. The Tenant submitted that there was another tenant in the rental unit at the end of the tenancy and he should be held responsible for some of the damages.

Analysis

Co-tenants are jointly and severally responsible for debts or damages incurred during a tenancy. A landlord may choose to make application against one, any, or all of the tenants. It is the responsibility of the tenants to proportion among themselves the cost of any damages or debt incurred during the tenancy.

At the end of a tenancy, Section 37(2)(a) of the Act requires tenants to leave a rental unit reasonably clean and undamaged except for reasonable wear and tear. Based on the documentary evidence and oral testimony of both parties, I find that the rental unit was not left in a reasonably clean state at the end of the tenancy. The Landlord has provided sufficient evidence to prove the amount required to bring the rental unit to reasonably clean standards, and I grant this portion of its application in the total amount of \$743.49 (\$360.00 + \$224.00 + \$159.49).

The Landlord did not provide sufficient evidence that the Tenant broke the windows at the rental unit. There was no condition inspection done in November, 2009, when the new tenancy started and therefore insufficient evidence that the windows were whole at the beginning of the new tenancy. This portion of the Landlord's claim is dismissed.

There was no condition inspection performed when the Landlord entered into a new tenancy with the Tenant and others at the end of November, 2009. Therefore, the Tenant is correct in her submission that the Landlord did not comply with Section 23 of the Act and, pursuant to the provisions of Section 38(5) of the Act, its right to claim against the security deposit is extinguished. However, Section 72 of the Act provides:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Pursuant to the provisions of Section 72(2)(b) of the Act, I hereby allow the Landlord to deduct its monetary award from the security deposit. Interest has accrued on the security deposit in the amount of \$15.16.

The Landlord has been largely successful in its application and is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a monetary claim as follows:

Monetary award	\$743.49
Subtotal	\$793.49
Less security deposit and accrued interest	- \$615.16
TOTAL AMOUNT DUE TO THE LANDLORD AFTER SET-OFF	\$178.33

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of **\$178.33** for service upon the Tenant. This Order must be served on the Tenant and may be filed in the Provincial Court of British Columbia (Small Claims) 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: June 29, 2011.

Residential Tenancy Branch