



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for cleaning and repair expenses, to recover the filing fee for this proceeding and to keep a portion of the Tenant's security deposit in payment of those amounts.

The Landlord's agent said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on April 18, 2011 to a forwarding address provided by the Tenant. Section 90(a) of the Act says a document delivered by mail is deemed to be received by the recipient 5 days later. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Is the Landlord entitled to keep all or a part of the Tenant's security deposit?

Background and Evidence

This fixed term tenancy started on May 1, 2010 and was to expire on April 30, 2011 however it ended on March 31, 2011 when the Tenant moved out (with the Landlord's consent). Rent was \$4,500.00 per month. The Tenant paid a security deposit of \$2,500.00 at the beginning of the tenancy. The Parties completed a move in condition inspection report on April 30, 2010 and a move out condition inspection report on March 31, 2011.

The Landlord's agent said the rental unit was newly renovated at the beginning of the tenancy and was therefore clean and in a good state of repair as shown on the move in inspection report. The Landlord's agent said that at the end of the tenancy, the Tenant had refilled some holes in the walls where he had hung pictures and as he told her he had done what was required of him, she did not note any wall damage on the move out condition inspection report. The Landlord's agent said that when the new tenant viewed the rental unit, however, he advised her that the holes were not repaired properly and as a result, she incurred expenses to have the holes repaired properly and to have the walls repainted.

The Landlord's agent also said she noted on the move out condition inspection report that the living room floor although in satisfactory condition, needed cleaning and that the stove also needed cleaning. The Landlord's agent said the Tenant advised her that the suite had been professionally cleaned and she did not realize that further cleaning was necessary until the new tenant brought it to her attention and as a result, she incurred expenses to have the rental unit cleaned. The Landlord's agent also said she did not inspect the garbage disposal during the move out inspection but a plumber advised her after the tenancy (but before the new tenant moved in) that there was glass in it. The Landlord's agent said she incurred expenses to have the garbage disposal cleaned out.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. Consequently, if the Landlord does not have the Tenant's written authorization to keep the security deposit, and does not make an application for dispute resolution to make a claim against it within the 15 days granted under s. 38(1), then the Landlord must return the security deposit to the Tenant. The Landlord may still bring an application for compensation for damages however she no longer has a right under the Act to offset those damages from the security deposit.

I find that the tenancy ended on March 31, 2011 and that the Tenant gave the Landlord his forwarding address in writing on that day (which is recorded on the move out condition inspection report). I also find that the Tenant did not give the Landlord written authorization to keep the security deposit. As a result, the Landlord had until April 15, 2011 at the latest to either return **all** of the Tenant's security deposit or to make an application for dispute resolution to make a claim against the deposit. The Landlord returned \$1,480.72 of the Tenant's security deposit on or about April 15, 2011, however, the Landlord's agent filed her application to retain the balance of the security deposit on April 18, 2011. Consequently, I find that the Landlord did not comply with s. 38(1) of the Act and as a result, the Landlord's right to make a claim against the security deposit for damages to the rental unit was extinguished. Accordingly the Landlord's application to keep the security deposit is dismissed without leave to reapply and ***I order the Landlord pursuant to s. 38(6) of the Act to return the balance of the Tenant's security deposit of \$762.28 to him forthwith.***

Section 37 of the Act says that at the end of a tenancy, a tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. RTB Policy Guideline #1 at p. 1 defines *reasonable wear and tear* as "natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Section 21 of the Regulations to the Act states as follows:

“In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.”

The move out condition inspection report completed by the Parties on March 31, 2011 indicates that all of the walls in the rental unit were in satisfactory condition and that the rental unit (with a few exceptions) was reasonably clean. The Landlord's agent did not list on the condition inspection report any anticipated deductions from the Tenant's security deposit for cleaning and repairs.

The Tenant's agent claimed that she discovered shortly after the report was completed that there were, in fact, damages and that the rental unit was not reasonably clean. In support of her argument that the walls needed repairs, the Landlord's agent provided an invoice with an e-mail dated April 4, 2011 which briefly described the work that was completed. The Landlord also provided an invoice dated April 4, 2011 for general cleaning and another e-mail dated April 4, 2011 from a plumber stating that he found glass the garbeurator and suggesting that it may have been left there by the Tenant.

I find that the e-mails and invoices provided by the Landlord in support of her argument that repairs and cleaning were necessary are hearsay and therefore not reliable. None of the authors of those documents attended the hearing to give evidence or to be questioned on those documents. There is also no evidence that the alleged wall damage was the result of an act or neglect or the Tenant as opposed to reasonable wear and tear or that the living room floor and stove (although requiring some cleaning) were not *reasonably* clean. Furthermore, I find that none of this evidence amounts to a **preponderance** of evidence (or great evidentiary weight) required under s. 21 of the Regulations to the Act to set aside the move out condition inspection report. Consequently, the Landlord's application for cleaning and repair expenses is dismissed without leave to reapply.

Conclusion

The Landlord's application in its entirety is dismissed without leave to reapply. A Monetary Order in the amount of **\$762.28** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: August 10, 2011.

Residential Tenancy Branch