



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application for Dispute Resolution by the Tenant seeking the return of her security deposit, for a monetary order, and recovery of the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present evidence orally and in documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Landlord breached the tenancy agreement, Residential Tenancy Act (the "Act") and regulations entitling the Tenant to the return of her security deposit and to recover the filing fee?

Background and Evidence

Although no tenancy agreement was entered into evidence, the Landlord testified that the tenancy began on May 15, 2009, and ended on March 31, 2011, monthly rent was \$1,800.00 and the Tenant paid a security deposit in the amount of \$900.00 on May 14, 2009.

The evidence indicates that the Tenant provided the Landlord a written forwarding address on the condition inspection report.

The Tenant's monetary claim is in the amount of \$1,630.00, representing a return of her security deposit and costs for increased hydro for the Landlord's showing of the rental unit.

In support of her application, the Tenant testified that the parties performed a move out inspection; however during the inspection, the Landlord retained control of the inspection report and would not allow the Tenant to make any notations herself or look at the document. Further, according to the Tenant, the Landlord wrote some notations on the report, would not allow the Tenant to look at the notations, and instructed the Tenant to sign the document without being able to review it. The Tenant testified that the Landlord told her that where she was signing was the signature line for the Tenant's disagreements to any deductions and she trusted the Landlord's word.

The Tenant stated that when she signed the document, it was on the hood of the car and upside down and she was not aware that the Landlord had written deductions. The Tenant submitted she was not given a copy of the inspection report and that she had to request a copy of the inspection report from the Landlord's office.

Upon receiving the inspection report, according to the Tenant, she was shocked to learn that the Landlord had notated deductions for suite cleaning for \$200.00, carpet cleaning for \$125.00, painting touch up for \$150.00, and repair/replacement (towel rack) for \$70.00 and vacuum hose for \$125.00. The Tenant stated that she only agreed to the deduction for the vacuum hose, yet a total deduction of \$670.00 was taken.

The Tenant submits that she completely disagreed with the inspection report as she spent five days cleaning the rental unit with her 26 year old son, had the carpet professionally cleaned and denied that touch up paint was necessary.

As to the towel rack the Tenant submitted that the towel rack was broken when she moved in, which was not discovered at the move-in inspection as there were no towels on the rack at that time.

The Tenant stated that she disputed the charges made; however the Landlord made the deductions and returned \$230.00 as a partial refund. The Tenant stated that the Landlord informed her that the first cheque of \$230.00 returned to her had been placed as a stop payment due to the Landlord later mentioning a charge of \$230.00 for a microwave. The Tenant disputed then and the Landlord subsequently sent another cheque for \$230.00 out.

The Tenant estimated her costs of increased hydro to be \$140.00 due to the Landlord showing the rental unit, turning on every light and not turning them off.

In response, the Landlord testified that the rental unit appeared to be "messy" and "just not up to snuff."

The Landlord denied that the inspection report was upside down when the Tenant signed it and that she did inform the Tenant she would be making the deductions.

The Landlord submitted that the Tenant would not give her an invoice for the carpet cleaning and that there was a gouge in the wall, apparently from the Tenant moving out of the rental unit.

The Landlord submitted that the actual costs are larger than the estimated costs mentioned on the inspection report.

I note that the Landlord wrote on the inspection report "Tenant did some cleaning, however more is required," and "(Tenant) is disputing touch up and towel bar repair as wear and tear." Despite this, the Landlord deducted these amounts from the Tenant's security deposit.

The Landlord's witness testified that she cleaned the rental unit after the Tenant vacated as there were dirty window tracks and greasy handprints. The witness also stated that the balcony had to be cleaned and swept.

In response the Tenant stated that she and her son spent five days cleaning the rental unit. The Tenant reiterated that the Landlord never provided a copy of the inspection report until she later requested it.

Analysis

Based on the testimony and evidence provided, and on a balance of probabilities, I find as follows:

I grant the tenant's application for Dispute Resolution and Order that the landlord pay the tenant double her security deposit pursuant to section 38(6) of the *Act* less the \$125.00 of the \$230.00 previously returned.

Section 38(1) of the *Act* requires a landlord to either return a tenant's security deposit or to file an application for Dispute Resolution to retain the security deposit within 15 days of receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

Section 38 (4) of the Act states landlord may retain an amount from a security deposit if, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Residential Tenancy Branch Regulations No. 21 states that in dispute resolution proceedings, a condition inspection report completed in accordance with the Act and Regulations 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.

Based upon a balance of probabilities, I accept the evidence of the tenant that she did not agree to the deductions, other than for the vacuum hose. In reaching this conclusion, I was persuaded by the inspection report, which notated that the Tenant disputed the touch up paint and the towel bar, yet the Landlord made the deductions anyway. I find that this caused me to question the Landlord's testimony and evidence.

I found the Tenant's testimony compelling and credible that she was not able to view the inspection report during the inspection nor was she able to review the document prior to signing it.

I further considered whether the inspection report was completed in compliance with Section 14 of the Regulations, which states that the landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act when the rental unit is empty of the tenant's possessions.

The Landlord testified that the tenancy began on May 15, 2009, yet the inspection report indicates that the inspection was performed on May 29, 2009. Additionally, I find on a balance of probabilities that the Landlord did not give the Tenant a copy of the inspection report in compliance with Section 35 of the Act.

Contrary to the *Act* I find the landlord made a deduction from the tenant's security deposit without authority as I have found that the Tenant did not consent to the deductions, other than the vacuum hose.

I further find the Landlord has not complied with the Act and Regulations by performing the move-in inspection when the rental unit was empty and did not give the Tenant a copy of the move-out inspection report.

I further find that upon a balance of probabilities that the Tenant submitted sufficient evidence that the damages claimed by the Landlord in the inspection report were not caused by the Tenant.

I find that the Tenant submitted insufficient evidence to prove her claim for increase hydro costs and I dismiss that portion of her application.

Having granted the tenant's application for a return of her security deposit, I also grant the tenants' request to recover the filing fee paid for submitting this application from the landlord.

I find the Landlord was obligated to return **\$775.00** from the Tenant's security deposit (\$900.00 less \$125.00 for the deduction for the vacuum hose the Tenant authorized), but failed to do so.

I therefore find the tenant has established a total monetary claim for the sum of **\$1,370.00**.

This sum is comprised of double the security deposit of \$775.00, plus the \$50.00 filing fee. From this sum I deduct the sum of \$230.00 which the landlord has already returned to the tenant.

Conclusion

I grant the tenant's application and have issued a monetary Order for the sum of **\$1,370.00**.

I am enclosing a monetary order for \$1,370.00 with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with this monetary order.

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 29, 2011.

Residential Tenancy Branch