



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, 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 to retain 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 equivalent of 1 week's rent as compensation for damage or loss, return of the deposit paid and filing fee costs.

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

Preliminary Matters

At the start of the hearing it was agreed that the male present at the hearing was in fact an occupant and that he would act as agent for the female tenant. The agent agreed he had not signed the tenancy agreement and that he had lived at the rental unit as an occupant. Therefore, the male's name will be removed from any Order issued.

The landlord's application indicated that she was claiming against the deposit in relation to damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$355.00?

May the landlord retain the deposit in satisfaction of the claim?

Is the tenant entitled to compensation in the sum of \$209.40 for loss of use of the rental unit?

Is the tenant entitled to return of the deposit paid?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that this was a fixed term tenancy that commenced on July 1, 2009; the term was to end in June 30, 2011. Rent was \$1,300.00 per month, due on the first day of each month. A deposit in the sum of \$650.00 was paid on July 1, 2009.

The tenant did not renew the tenancy which had required the tenant to vacate the unit at the end of the fixed term. The tenant paid June, 2011, rent owed; the landlord was given the keys on June 17, 2011.

On June 26, 2011, the parties met at the rental unit. The tenant asked about completing an inspection; she walked through the unit with the landlord, who then gave the tenant a cheque for the deposit owed. The next day the landlord cancelled the cheque, as she discovered that the unit had been damaged by the tenant. The landlord then attempted to arrange another inspection with the tenant, but that did not occur.

The landlord received the tenant's forwarding address on June 27, 2011; and applied claiming against the deposit within 15 days.

On June 30, 2011, the tenant submitted her claim for compensation and return of the deposit.

The landlord stated that she incurred costs in the sum of \$355.00 to replace carpet with laminate, as the sun room flooring was damaged by the tenant's pet rabbits. The tenant agreed that rabbits had been in the sun room but that the carpet was old and the rabbits were litter trained and would not have urinated on the floor.

The tenant stated that she completed a move-in condition inspection and sent it to the landlord with photographs. The landlord submitted copies of these photographs, plus others taken after the tenancy ended.

The parties each submitted copies of a number of emails sent to each other, which I have considered.

A copy of a July 6, 2011, invoice in the sum of \$336.00 was submitted for the cost of new laminate flooring, sanding and wall repair.

The tenant disputed the claim for what appears to have been an improvement, from old carpet to laminate flooring.

The tenant claimed loss of value of the tenancy as they did not have access to the unit after the keys were given to the landlord on July 26, 2011.

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.

I find, on the balance of probabilities, that the presence of rabbits on the floor of the sun room caused some damage to the carpet. I find that rabbits, placed on newspapers would very likely result in some damage to the flooring surface. I have taken into account the testimony and evidence before me and find, given the age of the carpet and replacement with laminate vs. carpet of the same type, that the landlord is entitled to nominal compensation for loss in the sum of \$75.00. The landlord has proven, on the balance of probabilities, that she did suffer a loss; however, in the absence of evidence of the cost of similar flooring replacement I find that the landlord is entitled to nominal costs only.

I dismiss the tenant's claim for loss of use. The tenant voluntarily vacated the rental unit, and gave the keys to the landlord. If the tenant had wished to have access to the unit beyond the date she had vacated, she was at liberty to retain the keys until the end of June. The tenant cannot voluntarily surrender the keys and then claim for compensation because she chose to vacate the unit.

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$125.00 in satisfaction of the monetary claim. The tenant is entitled to return of the balance of the deposit in the sum of \$525.00.

I have enclosed a copy of the *Guide for Landlords and Tenants in British Columbia*, for each party.

Conclusion

I find that the landlord has established a monetary claim in the amount of \$125.00, which is comprised of \$75.00 in damages and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution. The balance of the claim is dismissed.

The landlord will be retaining the tenant's security deposit in the amount of \$125.00, in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the deposit in the sum of \$525.00. 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: September 13, 2011.

Residential Tenancy Branch