



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for a monetary order for unpaid rent, a monetary order for damages, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery the filing fee. The application by the tenant is for return of the security deposit. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began July 1, 2010 with monthly rent of \$1000.00 and the tenant paid a security deposit of \$500.00.

The landlord testified that the tenant provided written notice to vacate April 30, 2011 but did not remove all of her belongings from the rental unit until May 7, 2011. The landlord stated that the tenant left the suite very messy, left discarded items in the unit, did not thoroughly clean the unit and damaged the carpets when cleaning them. The landlord stated that the tenant had also brought a pet into the unit and that the carpet had been ruined by the tenant's pet.

The tenant stated that the landlord never contacted her to complete a move-out inspection and that when she vacated she had cleaned the carpets and cleaned the rental unit with the exception of the oven. The landlord acknowledged that they had not completed the move-in and move-out reports as required and that was why they were not claiming the damage to the walls.

The tenant stated that she had not been able to move her chesterfield from the rental unit on April 30, 2011 as it had to be taken out the upstairs front door of the landlord's

residence and the landlord had not been responsive to the tenant's requests for a date and time to do this. The landlord maintained that they had been calling the tenant to come and get the rest of her belongings but that the tenant refused to take his calls. Both parties accused the other of not being forthcoming in their communication regarding this matter.

The tenant stated that she was finally able to get the chesterfield out of the rental unit through another door and the landlord stated that in doing do the tenant damaged the weather stripping and flashing on the door.

The tenant maintained that the carpet had been cut by a previous tenant to run a cable underneath it and that the carpet was not damaged by her pet hamster. The tenant stated that her hamster was always kept in a cage and it did not have free run of the suite and soil or otherwise damage the carpets. The landlord stated that one of the bedroom closet floors was covered with rodent droppings and that the damage the tenant is referring to is in another room.

The landlord did state that he had not yet replaced the carpets in the rental unit and that the unit was re-tenanted. The landlord said that the carpets would have to be replaced as where they had gotten very wet during the tenant's cleaning process they carpet was starting to smell.

The landlord stated that the bathroom was let dirty as were the floors and walls. The tenant maintained that she cleaned the rental unit and the mouldy areas in the bathroom and marks on the walls the landlord referred to she could not get off. The tenant stated that any damage noted in the rental unit was there at the start of the tenancy and not caused by her.

The landlord said that he had cleaned the bathroom himself and had been able to get it clean and that they had been able to get the marks off the walls and get the floors clean. The tenant stated that she was not in agreement to any of the landlord's claim for cleaning costs.

The landlord stated that the tenant had left a 6' by 3' cabinet behind in one of the bedrooms and he had to haul it to the transfer station. The tenant denied knowledge of ever having such an item in her possession and stated that she had not left this cabinet in the rental unit.

The landlord in this application is seeking a monetary order for \$270.00 compensation and to retain the \$500.00 security deposit for over-holding, damages and cleaning costs for the following:

Tenant over-holding 7 days	\$250.00
Cleaning of suite: walls, kitchen, bathroom	\$150.00
Carpet replacement: water damage, pet damage	\$300.00

Trash removal	\$20.00
Total Claim	\$770.00

The tenant testified that she gave the landlord her forwarding address in writing and in person on June 7, 2011 and as the landlord had not made his application within the required 15 day time limit the tenant was seeking return of double the deposit. The landlord acknowledged that he had been in receipt of the tenant's forwarding address as the tenant had stated.

The tenant is seeking \$1000.00 in return of double the security deposit.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit.

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit. Accordingly I find that the tenant is entitled to a monetary order for \$1000.00.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for over-holding, cleaning costs and trash removal.

The parties testimony conflicted on the circumstances around the tenant removing the chesterfield therefore the responsibility for the lost rent due to the tenant over-holding for 7 days will be borne by both the landlord and tenant. Accordingly I find that the tenant is entitled to a monetary order for \$125.00.

I accept the landlord's testimony and photographic evidence that some cleaning was required after the tenant had moved out and that the cabinet left in the rental unit was left by the tenant. Accordingly I find that the landlord is entitled to a monetary order for \$170.00.

The landlord at this time has not suffered a financial loss in regards to the damage to the carpet and until such time as the landlord completes replacement of the carpet, the

landlord will not be able to move forward with their claim. Therefore this portion of the landlord's claim is dismissed with leave to reapply.

The landlord understands that per section 60 of the Residential Tenancy Act they have two (2) years after the date which this tenancy ended to proceed with the claim for damages (replacement of the carpet).

The tenant has been awarded \$1000.00 in return of double the security deposit. The landlord has been awarded \$295.00 in loss of rent, cleaning costs and trash removal. These amounts set-off resulting in a balance of \$705.00 to the tenant for which the tenant will be provided a monetary order.

As both applications had merit, I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

The landlord has been awarded **\$295.00** in loss of rent, cleaning costs and trash removal. I order the landlord pursuant to s. 38(4) of the Act to keep \$295.00 of the tenant's \$500.00 security deposit in full satisfaction of the claim.

The tenant has been awarded **\$1000.00** in return of double the security deposit.

I find that the tenant has established a monetary claim for **\$705.00** in return of the security deposit and I grant the tenant a monetary order under section 67 of the *Act* for this amount.

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: September 27, 2011.

Residential Tenancy Branch