



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking to keep all or part of the security deposit due to alleged damages by the tenant, for a monetary order for money owed or compensation for damage or loss to the rental unit and damage to the rental unit and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and respond each to the other, and make submissions to me.

Only the evidence timely submitted and relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for alleged damages and money owed, to retain the security deposit and to recover the filing fee?

Background and Evidence

This 4 month, 11 day, fixed term tenancy began on January 20, 2010, continued thereafter on a month to month basis, monthly rent was \$1,000.00 and the tenant paid a security deposit of \$500.00 on January 10, 2010. The landlord testified that the tenancy officially ended on June 13, 2011, and the tenant testified that the tenancy ended on June 2, 2011, when she vacated the rental unit as a result of receiving a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The landlord's monetary claim is in the amount of \$6,300.00, which includes a claim for \$4,000.00 to have the rental unit cleaned and painted, \$1,200.00 to replace the carpet, \$1,000.00 for unpaid rent for June 2011 and \$100.00 for recovery of the filing fee.

In support of the application, the landlord's relevant evidence included an estimate to replace the carpet, a document showing the rental unit was painted sometime prior to November 27, 2009, an invoice for carpet cleaning, emails between the parties and the tenancy agreement.

The landlord's agent confirmed that there was no move in or move out condition inspection report.

The agent submitted that the landlord is entitled to a monetary order for painting and cleaning as the rental unit was freshly painted prior to the tenancy and that the tenant left the rental unit in a state which required cleaning and painting, especially as it related to alleged smoking by the tenant.

The agent stated that the amount requested is an estimate and that the work has not been done as the landlord "was not going to spend that kind of money if we won't get compensation."

The landlord's agent repeated this statement in regard to the request for \$1,200.00 for carpet replacement and said the carpet was soiled beyond repair.

Upon query, the landlord's agent submitted that he was not aware if the tenant prior to this tenancy was a smoker and that an adjoining tenant was allowed to smoke.

The agent submitted that the tenant did not pay rent in June, received a 10 Day Notice to End Tenancy for Unpaid Rent, and left in June, owing rent for that month in the amount of \$1,000.00.

In response, the tenant denied that she smoked in the rental unit and did not cause the alleged damage brought on by cigarette smoker. The tenant claimed that other tenants in the residential property, including the tenant below her, smoked in their rental unit and therefore was the likely cause of the smell of smoke.

The tenant stated that she thoroughly cleaned the rental unit and paid to have the carpet professionally cleaned and had no idea why the landlord would be claiming such an amount listed in the application. The tenant submitted a copy of the invoice of the carpet cleaning.

The tenant stated that she contacted the landlord's agent to arrange a move out inspection, but that she never heard from the agent.

Analysis

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

In a claim for damage or loss under the Residential Tenancy Act (the “Act”) or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent (tenant) in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove all four steps.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

In the absence of a move in or move out condition inspection report, I find the landlord has not sufficiently proven the condition of the rental unit before the tenancy began or after it ended and thereby is unable to meet steps 1 and 2 of her burden of proof.

Alternatively, had the landlord performed a move in or out condition inspection, I would still dismiss the landlord’s claim for failure to prove that the tenant damaged the rental unit. The landlord did not submit any proof that the tenants damaged the rental unit, such as with photos or independent verification, or that the rental unit required cleaning.

Additionally, the landlord stated that the repair for any alleged damage has not been performed and the landlord therefore failed to meet step 3 of her burden of proof.

I therefore **dismiss** the landlord’s monetary claim for \$5,200.00 for carpet replacement, cleaning and repainting the rental unit, **without leave to reapply**.

As to the landlord’s claim for unpaid rent, section 26 of the Act requires a tenant to pay rent on the day it is due under the tenancy agreement. I therefore find that the tenant owed rent of \$1,000.00 on June 1, 2011, did not pay that rent, and vacated the rental unit still owing this amount.

I therefore find the landlord has established a **monetary claim** in the amount of **\$1,000.00** for unpaid rent for June 2011.

I find the landlord was largely unsuccessful in her application, and I therefore **award** her a partial filing fee in the amount of **\$25.00**.

I allow the landlord to retain the tenant's **security deposit of \$500.00** in partial satisfaction of her monetary claim of **\$1,025.00** and I **grant** the landlord a monetary order for the balance due in the amount of **\$525.00**, under authority of Section 67 of the Act

I am enclosing a monetary order for \$525.00 with the landlord'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 tenant fail to comply with this monetary order.

Conclusion

The landlord has established a monetary claim of \$1,025.00, is directed to retain the tenant's security deposit of \$500.00 in partial satisfaction of the claim, and is granted a monetary order for the balance due in the amount of \$525.00.

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: October 05, 2011.

Residential Tenancy Branch