



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the unit, damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

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 Matter

There was not claim before me in relation to damage or loss; only damage to the rental unit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$770.00 for damage to the rental unit?

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

Background and Evidence

The tenancy commenced on October 1, 2010, a deposit in the sum of \$850.00 was paid. The tenant vacated the unit on September 30, 2011.

There was no move-in condition inspection report completed.

A move-out condition inspection report was completed; the tenant signed the report, agreeing with the content of the report. A forwarding address was given to the landlord

and the landlord applied claiming against the deposit within 15 days of the end of the tenancy.

The landlord has claimed the following:

- 610.00 - new front door lock and repair;
- 100.00 - Condo smoking violation;
- 50.00 – lost key fob; and
- 10.00 – lost mail box key.

The tenant acknowledged that the landlord is entitled to compensation for both of the keys.

During the hearing the tenant acknowledged that her guest was smoking on the property. The tenant had previously paid a smoking fine imposed by the strata, but she felt as she was not with her guest, she was not responsible for the 2nd fine imposed. The landlord supplied a copy of a September 26, 2011, letter from the strata in relation to the infraction that occurred on September 18, 2011; indicating that the tenant's guest used a profanity when asked to cease smoking. On October 5, 2011, the tenant sent the landlord an email, a copy of which was supplied as evidence, which indicated that tenant would not pay the fine, as she was not the person who was smoking.

The landlord provided a copy of an undated invoice issued by a lock and key company; the lock and deadbolt cost \$250.00; labour totalled \$250.00 and extra keys cost \$45.00. The landlord stated that during the time they were showing the unit, the door to the unit was found open; the handle to the door was hanging and despite efforts to repair the lock, it had to be replaced.

On September 19, 2011, the landlord sent the tenant an email to arrange the condition inspection and indicated that on the previous Friday he found the unit door ajar, the lock destroyed. The landlord believed someone had tried to force the door or jerk the door, causing damage. The landlord indicated he had reported the matter to the concierge.

The tenant testified that throughout the tenancy the door lock was not properly working, that it jammed a bit. She did not report this to the landlord, as the lock did function. The tenant stated she did not break the handle and that at one point the landlord had indicated he did not wish to charge her for this cost.

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.

The tenant has agreed the landlord should be compensated for the lost key fob and mail key; therefore, I find that the landlord is entitled to \$60.00 for those items.

I find that the tenant was aware of the rules in relation to smoking; she had paid a previous fine. I find that the tenant is responsible for the actions of her guests that result in damage to the landlord, as provided by section 32(3) of the Act. Therefore, I find that the landlord is entitled to compensation for the fine that has been levied in the sum of \$100.00, as a result of the tenant's guest having smoked on the property.

In relation to the lock costs; I find on the balance of probabilities that the landlord has failed to prove the tenant caused the damage to the lock. I considered the landlord's email in which he informed the tenant of the repair; the landlord did not suggest the tenant had been responsible for the lock, it was only later that a claim was made. In the absence of evidence that the tenant or her guests were negligent and caused the damage, I dismiss this portion of the claim.

Therefore, I find that the landlord is entitled to compensation which may be deducted from the deposit, in the sum of \$160.00.

As the tenant did not agree to the smoking fine costs, I find that the landlord's application has merit and 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 \$210.00 in satisfaction of the monetary claim. Residential Tenancy branch policy suggests that when a landlord claims against the deposit, any balance should be Ordered returned to the tenant; I find this to be a reasonable stance. Therefore; I Order the landlord to return, forthwith, the balance of the deposit in the sum of \$640.00

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

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$210.00, which is comprised of \$160.00 in damage and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit in the amount of \$210.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the deposit; \$640.00. 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: December 21, 2011.

Residential Tenancy Branch