



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for an order for monetary compensation for damage to the rental unit, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The landlord and tenant appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to respond each to the other party, 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

Is the landlord entitled to retain the tenants' security deposit of \$500.00 in satisfaction of a monetary claim for damages, pursuant to sections 38, 67 and 72 of the *Residential Tenancy Act* (the "Act")?

Background and Evidence

This month to month tenancy began on January 1, 2011, ended on or about August 31, 2011, monthly rent was \$1,200.00 and the tenants paid a security deposit of \$500.00 at the beginning of the tenancy.

The landlord is seeking to retain the tenants' security deposit of \$500.00 for damages to the rental unit, although the landlord submitted that the tenants committed damage in excess of \$500.00.

The landlord submitted that a large part of her claim centered on damaged blinds, which she stated were destroyed by the tenants' dog. The landlord stated that although 2 blinds were destroyed, it was necessary to replace all three living room blinds so that they were matched.

The landlord also stated that the carpet required cleaning, the rental unit required cleaning and refrigerator parts needed to be replaced, as caused by the tenants.

The landlord's relevant evidence included invoices for the blinds, carpet cleaning and photos of the rental unit.

Upon query, the landlord acknowledged that there was no move-in and move-out condition inspection report and that she received the tenants' written forwarding address on or about September 22, 2011.

In response the tenant stated that their dog damaged some lower part of the blinds, which caused them to obtain an estimate for replacing 2 of the blinds. The tenant stated that the landlord then informed them not to worry about replacing the blinds as they were sun damaged anyway and needed replacing.

The tenant denied leaving the rental unit unclean and in need of cleaning, as they left the rental unit in better shape than when they arrived.

Analysis

In a claim for damage or loss under 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 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 damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Sections 23 and 35 of the Act require the landlord and tenant to inspect the condition of the rental unit at the start and end of the tenancy and state that the landlord must complete a condition inspection report in accordance with the Act and regulations. This requirement is not discretionary. [Emphasis added]

Sections 24 and 36 of the Act state that the rights of a landlord to claim against the security deposit for damages is extinguished if the landlord does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. [Emphasis added]

The landlord admitted not having a move-in or move-out condition inspection and therefore no condition inspection report.

Based on the landlord's failure to comply with the Act, I therefore find that the landlord's right to file an application claiming against the tenants' security deposit for damages has

been extinguished for failure to provide opportunities for inspection and to complete the condition inspection report.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenants' forwarding address on September 22, 2011, but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's security deposit within 15 days of having received their forwarding address, section 38 of the Act requires that the landlord pay the tenants double the amount of the deposit.

As I have found the landlord lost her right to claim against the tenants' security deposit for the damages listed in her application, I **dismiss** her application, **without leave to reapply**.

As I have dismissed the landlord's application, I decline to award her the filing fee.

As I have found that the landlord must pay the tenants double their security deposit, I grant the tenants a monetary order pursuant to section 67 of the Act for the amount of **\$1,000.00**.

I am enclosing a monetary order for **\$1,000.00** with the tenants' 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.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenants are granted a monetary order for \$1,000.00.

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: December 16, 2011.

Residential Tenancy Branch