



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed October 24, 2011: MNSD; FF

Landlord's application filed December 3, 2011: MND; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks return of his security deposit and pet damage deposit; and to recover the cost of the filing fee from the Landlords.

The Landlord seeks a monetary award for damages to the rental unit; to apply the security deposit and pet damage deposit in satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

Both parties signed into the teleconference and gave affirmed testimony at the Hearing.

Issues to be Decided

1. Is the Tenant entitled to compensation in the equivalent of double the amount of the security and pet damage deposit, pursuant to the provisions of Section 38(6) of the Act?
2. Is the Landlord entitled to a monetary award pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The parties agreed on the following facts:

This tenancy began on February 24, 2011 and ended on September 30, 2011. Monthly rent was \$1,100.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00 and a pet damage deposit in the amount of \$275.00 at the beginning of the tenancy.

A condition inspection was completed at the beginning and at the end of the tenancy. The Tenant gave the Landlord his forwarding address in writing on the move-out Condition Inspection Report on October 1, 2011.

The Landlord provided the following testimony:

The Landlord testified that at the beginning of the tenancy the Tenant asked permission to have a cat door installed in a door at the rental unit. The Landlord stated that she agreed as long as a proper mechanical cat door was installed by the Tenant. The Landlord testified that the Tenant did not install the door properly.

The Landlord testified that the Tenant verbally agreed that the cost of shampooing the carpet and 3 hours of cleaning could be deducted from the deposits at the end of the tenancy. She stated that the Tenant also verbally agreed to fix the cat door and that once the door was fixed properly, she would return the balance of the security and pet damage deposit to the Tenant after deducting the cost of shampooing the carpet and cleaning the rental unit.

The Landlord testified that the Tenant did not fix the door in a timely manner and that, because of the way he had cut into the door, the door could not be repaired and had to be replaced along with the door jamb. The Landlord testified that it took 5 hours to install the new door.

The Landlord stated that the new occupant cleaned the rental unit and that it cost \$90.00 (3 hours x \$30.00) to clean. She stated that the new occupant also complained that there were fleas in the rental unit. The Landlord seeks to recover the cost of spraying the rental unit for fleas.

The Landlord provided invoices in support of her application and claims the following in damages:

Cost of material and labour to install new door and locks	\$489.21
Cost of carpet cleaning	\$108.80
Cost of cleaning the rental unit	\$90.00
Cost of spraying for fleas	<u>\$82.69</u>
TOTAL CLAIM	\$770.70

The Tenant gave the following testimony:

The Tenant stated that the Landlord did not ask that a proper mechanical door be installed. He testified that they had agreed that he could cut a hole in the door as long as it looked professional.

The Tenant testified that he had roommates and that one of his roommates ("R1") had a kitten that was allowed to go outside without a flea collar. The Tenant testified that R1 paid the Tenant rent money and that the Tenant paid the Landlord.

The Tenant stated that his cat was not responsible for the fleas because his cat was regularly treated by a vet against fleas.

The Tenant testified that the door that he cut was a fire door and that he should not have been given permission to cut it because of safety issues that he was unaware of at the time he asked permission. He stated that he "dragged his feet" a little but that he ordered and paid for a proper cat door, which was ready to pick up two weeks after he ordered it.

The Tenant testified that he and the Landlord had talked about paying one of his roommates "R2" (who was staying on in the rental unit along with "R1" as new tenants) to clean the rental unit, but that it was his roommates who left the rental unit in a mess and that the entire garage was full of their stuff. The Tenant testified that his roommates lived in the rental unit after he moved out. The Tenant testified that his roommates paid rent for the month of October, 2011.

The Landlord gave the following reply:

The Landlord testified that the Tenant gave verbal notice that he was moving out at the end of September, 2011. She stated that the Tenant asked for more time to repair the cat door and that his roommates, who were going to stay and take over the tenancy, agreed that he could have more time. The Landlord submitted that this is the reason why she did not return the residue of the Tenant's deposits within 15 days of the end of the tenancy.

The Landlord testified that ten days later the roommates gave their notice that they would also be moving out.

The Landlord testified that when the cat door was not repaired by October 15, 2011, the Landlords decided to order a new door and have it installed. She stated that it was then that she discovered that the Tenant had cut the door in such a way that repair was impossible without compromising the integrity of the door, so she had to replace it. She stated that the Tenant was supposed to meet with her at the rental unit on October 30, 2011, to collect the balance of the security and pet damage deposits, but he did not show up. She stated that the next day, he served her with his Application for Dispute Resolution.

Analysis

Both parties agreed that from February 24, 2011 to September 30, 2011, R1 and R2 were occupants only and not tenants of the Landlord's. Occupants have no rights or responsibilities under a tenancy agreement. Tenants are responsible for the actions of their roommates (occupants) or guests.

Regarding the Tenant's Application:

Sections 38(1) and (4) of the Act provides that, unless the Landlord has the Tenant's **written** agreement to retain any of the security or pet damage deposit, the Landlord **must** return the deposits to the Tenants or make an application for dispute resolution claiming against the deposits within **15 days** after the later of the date that the tenancy ends and the date the Tenant provides his forwarding address in writing.

Section 38(6) of the Act provides that if the Landlord does not return the deposits or file for dispute resolution within 15 days, the Landlord **must** pay the Tenant double the amount of the deposits.

Based on the testimony and documentary evidence provided by both parties, I find that the Tenant did not provide his **written** consent that the Landlords could retain any of the security or pet damage deposit. I find that the Landlords received the Tenant's forwarding address on October 1, 2011, and that they did not return the deposits in full, or file an application for dispute resolution against the deposits, within 15 days of receipt of his forwarding address. The Landlords did not file their Application for Dispute Resolution until December 3, 2011. Therefore, pursuant to the provisions of Section 38(6) of the Act, I find that the Tenant is entitled to compensation in the amount of **\$1,650.00**.

The security deposit and pet damage deposit have been extinguished but this does not preclude the Landlord from filing her own application pursuant to the provisions of Section 67 of the Act.

Regarding the Landlord's Application:

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulation or tenancy agreement, the director may determine the amount of, and order the party to pay compensation to the other party.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Landlord seeks to recover the costs of cleaning the rental unit at the end of the tenancy, shampooing the carpet, flea treatment, and replacing the fire door. I find that the Tenant and the Landlord had an agreement with respect to the door that the Tenant would leave it in acceptable condition at the end of the tenancy and that he did not do so.

Section 37 of the Act requires a tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. I am satisfied that the rental unit required some cleaning, carpet shampooing, flea treatment, and that the door was not repaired at the end of the tenancy. I find the hourly rate of \$30.00 for cleaning to be excessive and allow this portion of the Landlord's claim in the amount of \$45.00 (3 hours @\$15.00 per hour). The Landlord provided receipts for the cost of developing photos of the damaged door. These are costs that are not contemplated or provided for in the Act. The Landlord seeks the cost of labour for installing the new door 5 hours @ \$25.00 per hour), but did not provide a receipt. However, I am satisfied that it took some time to install the door and I allow this portion of the Landlord's claim in the nominal amount of \$50.00.

Based on the testimony of both parties and documentary evidence provided by the Landlord (the invoices and receipts), I find that the Landlord has provided sufficient proof to establish her claim, calculated as follows:

Material and labour for installing new door and	
Disposing of old door	\$412.68
Cost for cleaning the carpets	\$108.80
Cost for cleaning rental unit	\$45.00
Cost of flea treatment	<u>\$82.69</u>
TOTAL AWARD	\$649.17

Set off

Both Applications had merit and I hereby order that the parties each bear the cost of their own filing fees. I hereby set off the Landlord's monetary award against the Tenant's monetary award, and provide the Tenant a Monetary Order, calculated as follows:

Tenant's monetary award	\$1,650.00
Landlord's monetary award	<u>\$649.17</u>
TOTAL	\$1,000.83

Conclusion

I order that both parties bear the cost of their filing fees.

I find that the Tenant has established a monetary award in the amount of \$1,650.00.

I find that the Landlord has established a monetary award in the amount of \$649.17.

After setting off the Landlord's award against the Tenant's, I hereby provide the Tenant a Monetary Order in the amount of **\$1,000.83** for service upon the Landlord. This Order may be filed in the Provincial Court 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: January 25, 2012.

Residential Tenancy Branch