



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain part of the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to retain part of the security deposit as claimed?

Background and Evidence

The parties agreed that the tenancy began in 2010 and ended on September 1, 2011 and that the tenant paid a \$625.00 security deposit. The parties further agreed that in October 2011 the landlord had issued a \$295.00 cheque to the tenant as a refund of that part of the security deposit against which he did not wish to make a claim. The tenant testified that he has not yet negotiated that cheque.

The landlord testified that the tenant had asked to stay in the rental unit until September 1, 2011 and stated that he had agreed as the new tenants would be travelling from Kelowna on that day and would not need the unit in the morning. The tenant claimed that the landlord had told him he could stay until 6 p.m. The landlord denied having said the tenant could stay until 6 p.m.

The tenant testified that he had substantially cleaned the unit by the time he left for work on September 1 and had intended to return to the unit after work to complete cleaning the few things that still needed finishing. The parties spoke on the phone on the morning of September 1 and the landlord began cleaning the unit. He testified that he and an assistant spent a total of 10 hours cleaning the unit, which included cleaning carpet and floors and scrubbing the kitchen. The tenant stated that while some cleaning

was required, he felt that 10 hours was excessive. The landlord seeks to recover \$200.00 for cleaning, at a rate of \$20.00 per hour for 10 hours.

The landlord testified that at the end of the tenancy, he had to replace drawer and cupboard fronts in the kitchen which had been damaged by water. The landlord stated that the drawers would not close as the wood had swelled and warped from having been exposed to water. The tenant testified that he had been careful in keeping the counter dry and had properly used the dish drainer, allowing it to drain into the sink rather than onto the counter. He suggested that the damage was caused by a design flaw in the countertop. The landlord testified that there was no damage to the cupboard fronts at the outset of the tenancy and the tenant did not dispute this statement. The landlord seeks to recover \$230.00 as the cost of materials and labour.

In his application the landlord had sought to recover the filing fee paid to bring his application, but at the hearing indicated that he would bear this expense.

Analysis

Under the *Residential Tenancy Act*, landlords in BC are responsible to ensure that a condition inspection of a rental unit is conducted at the beginning and end of each tenancy and a report generated. Failure to do so results in the extinguishment of the landlord's right to claim against the security deposit. In this case, it is clear that this right has been extinguished as the landlord acknowledged that he did not perform a condition inspection of the unit and generate a report. However, while the Act provides that the landlord's right to claim against the deposit is extinguished, the Act does not prohibit the landlord from making a monetary claim against the tenant and section 72(2)(b) of the Act permits the landlord to deduct a monetary award from the security deposit. The net result of the interaction of these sections is that the security deposit may be applied to any monetary award made to the landlord.

The absence of the condition inspection report poses problems with the landlord's claim for the cost of cleaning. The landlord did not provide evidence such as photographs to corroborate his claim and in the absence of a document such as the condition inspection report in which both parties would have had the opportunity to comment on the condition of the unit at the conclusion of an inspection, I am left with the conflicting testimony of the parties.

A tenant is not required to leave a rental unit in spotless condition, but to leave it in reasonably clean condition at the end of the tenancy. Without photographs or other corroborating evidence, I am unable to determine whether the unit was reasonably clean. As the tenant acknowledged that some cleaning was still required, I find it

appropriate to award the landlord \$40.00 which represents 2 hours of work. I recognize that the tenant believed he could come home from work on September 1 to complete cleaning, but as the parties disagreed on the additional time allotted to the tenant and in the absence of proof that the tenant was granted exclusive possession until 6 p.m. on September 1, I find that he should have had the rental unit cleaned and ready to surrender in the morning of September 1.

As for the claim for the cost of repairing the cupboard fronts, the landlord stated and the tenant did not dispute that there was no damage to the cupboards at the outset of the tenancy. It seems reasonable to conclude that if the cupboard's exposure to water was the result of a design flaw, it would have been damaged during previous tenancies as well. I find it more likely than not that the water damage resulted from the tenant's actions and I find that the tenant should bear the cost of the repairs. I find the landlord's costs to be reasonable and I award him \$230.00.

Conclusion

The landlord has been awarded a total of \$270.00. I order him to retain this amount from the security deposit and to return the \$355.00 balance to the tenant forthwith. I grant the tenant a monetary order for \$355.00. As the tenant already has a \$295.00 cheque in his hands he may negotiate that cheque leaving a \$60.00 balance payable by the landlord or the tenant can return that cheque to the landlord and the landlord may issue a payment for the entire \$355.00. If the cheque is negotiated, it will serve to reduce the amount payable on the order. I leave it to the parties to determine how payment will be made.

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: February 17, 2012

Residential Tenancy Branch