



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested made application for compensation for unpaid rent, 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.

The landlord provided affirmed testimony that on November 25, 2011, the tenant sent her forwarding address to the landlord, via email. A copy of the email was supplied as evidence. The landlord used the address to serve the tenant with copies of the Application for Dispute Resolution and Notice of Hearing on December 9, 2011. The registered mail was returned as unclaimed. A Canada Post receipt and tracking number was provided as evidence of service.

Service may not be avoided by a failure to claim registered mail; which is deemed served on the 5th day after mailing. Therefore, these documents are deemed to have been served in accordance with section 89 of the *Act*; however the tenant did not appear at the hearing.

Preliminary Matters

A set of photographs supplied by the landlord as evidence were not considered as they were served to the tenant by regular mail sent on February 20, 2012; receipt would not be deemed as at least 5 days prior to the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit in the sum of \$315.00?

Is the landlord entitled to compensation for damage or loss under the Act in the sum of \$794.85?

May the landlord retain the deposit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2011; rent was \$975.00 per month, due on the first day of each month. A deposit in the sum of \$487.50 was paid. Condition inspection reports were not completed.

The tenancy ended on October 31, 2011, after the tenant gave notice on October 16, 2011.

The landlord has claimed cleaning costs in the sum of \$315.00; the tenant had allowed her dog to defecate on the rugs; the stove was left in a very dirty condition. Professional cleaners were hired. A copy of statement completed by the landlord's daughter was supplied as evidence. The statement showed payment made from the daughter's bank account in the sum of \$315.00 on November 4, 2011.

The landlord claimed carpet cleaning costs in the sum of \$112.00. The tenant allowed her dog to defecate on the carpet and did not clean them.

The landlord claimed reimbursement of costs incurred after the tenant's dog caused damage to the landlord's pet. An invoice in the sum of \$623.54 was supplied as evidence of the claimed amount.

The landlord paid \$59.31 for advertising the unit; the unit was re-rented, but the landlord lost November, 2011, rent revenue. A copy of the advertising invoice was not supplied as evidence.

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.

In relation to the vet fees; I decline jurisdiction. The landlord could not point to the section of the Act that the tenant may have breached. I determined that the dispute related to the tenant's dog and any damage that may have been caused to the landlord's pet is not within the jurisdiction of the Act.

In relation to the deposit held in trust by the landlord, Section 17 of the Residential Tenancy Regulation provides, in part:

- 17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.**
(2) If the tenant is not available at a time offered under subsection (1),
(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

(Emphasis added)

The landlord confirmed that neither a move-in or move-out condition inspection report was completed.

Section 36(2) of the Act provides:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [2 opportunities for inspection],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

(Emphasis added)

Section 35(2) of the Act requires the landlord to provide at least 2 opportunities to complete the inspection, while the regulation requires the final opportunity be given in the approved, written form.

In the absence of evidence of a condition inspection at the start of the tenancy and evidence of a final opportunity to complete the inspection at the end of the tenancy, as required by the Regulation, I find that the landlord's right to claim against the deposit was extinguished. Therefore, the landlord had 15 days from the date he received the tenant's written forwarding address to return the deposit.

The landlord was free to submit a claim for damage to the unit; but could not retain the deposit while awaiting a hearing. Therefore, as the landlord continued to hold the deposit after his right to claim against it was extinguished and did not return the deposit within 15 days of receipt of the tenant's written forwarding address, I find, pursuant to section 38(6) of the Act that the landlord is holding double the deposit paid.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance.

I find that the landlord is entitled to the cleaning and carpet costs claimed, as supported by the bank evidence and invoice for carpet cleaning. The tenant did not attend the hearing to dispute the claim and I have accepted the landlord's affirmed testimony that the tenant failed to leave the unit reasonably clean.

In the absence of verification of the advertising cost claimed, I find that portion of the claim is dismissed.

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 sum of plus interest, in the amount of \$427.00, in satisfaction of the monetary claim.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$477.00 in satisfaction of the monetary claim.

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

Conclusion

As the landlord's right to claim against the deposit for damages was extinguished when condition inspection reports were not completed and the deposit was not returned to the tenant within 15 days of receipt of the tenant's address, the tenant is entitled to return of double the \$487.50; totalling \$975.00.

I find that the landlord has established a monetary claim, in the amount of \$477.00, which is comprised of cleaning costs 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 \$477.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of \$498.00. In the event that the landlord not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I decline jurisdiction in relation to the vet costs claimed.

The balance of the claim is dismissed.

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 20, 2012.

Residential Tenancy Branch