



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD, FF / MNSD, FF

Introduction

This hearing was scheduled in response to 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / retention of the security deposit / and recovery of the filing fee; ii) by the tenants for a monetary order for the partial return of the security deposit / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the month-to-month tenancy began on March 22, 2008. At the start of tenancy, rent of \$1,250.00 was payable in advance on the first day of each month, and a security deposit of \$625.00 was collected. By the end of tenancy the monthly rent was \$1,310.00. While a walk-through of the unit was undertaken by the parties at the beginning of the tenancy, a move-in condition inspection report was not completed.

Following notice by the tenants, the tenancy ended December 31, 2011. Neither a walk-through of the unit, nor a move-out condition inspection report were completed by the parties.

The parties agree that the tenants requested the return of their security deposit and provided their forwarding address in writing in approximately mid January 2012. The landlord's application for dispute resolution was filed on January 27, 2012, while the tenants filed their application on February 21, 2012. Presently, the landlord still retains the tenants' full security deposit.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties led to a partial resolution. Specifically, it was agreed as follows:

- that the tenants do not dispute the landlord's withholding from the security deposit of \$134.40 for carpet repair.

The tenants also acknowledge that they did not have the carpets professionally cleaned at the end of tenancy, however, they consider the amount claimed by the landlord in this regard to be excessive.

For reference, the attention of the parties is drawn to the following sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Section 37: **Leaving the rental unit at the end of a tenancy**

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the applications and my findings around each are set out below.

LANDLORD(S)

\$341.60*: carpet cleaning. Residential Tenancy Policy Guideline #1 addresses "Landlord & Tenant – Responsibility for Residential Premises," and under the heading CARPETS, provides in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly

stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

In view of the nearly 4 year term of this tenancy, in light of the tenants' acknowledgement that the carpets were not professionally cleaned at the end of tenancy, and in consideration of the receipt for carpet cleaning costs submitted in evidence by the landlord, I find that the landlord has established entitlement to the full amount claimed.

\$134.40*: carpet repair. Pursuant to the tenants' agreement that the landlord may withhold this amount from the security deposit, I find that the landlord has established entitlement to the full amount claimed.

\$168.00: painting of kitchen cabinets. Section 37 of the Act, as above, provides in part that when a tenant vacates a unit, the tenant must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." In the absence of the comparative results of move-in and move-out condition inspection reports, I find that there is insufficient evidence to support this aspect of the landlord's claim. Accordingly, this aspect of the application is hereby dismissed.

\$125.00: cleaning in the unit (5 hours x \$25.00 per hour). For reasons identical to the reasons set out immediately above, this aspect of the landlord's application is hereby dismissed.

Total Entitlement: **\$476.00** (\$341.60 + \$134.40).

TENANT(S)

Following from the above, I find that the tenants have established Total Entitlement which is calculated as follows:

\$625.00 (original security deposit) - \$476.00 (landlord's entitlement) = \$149.00

\$149.00 (tenants' net entitlement, as above) + \$7.30 (interest calculated on the original security deposit during the time between the start of tenancy and the date of this decision) = **\$156.30** (\$149.00 + \$7.30).

As both parties have achieved a measure of success with their applications, I find that their respective entitlements to recover the \$50.00 filing fee offset each other. In the result, both applications to recover the filing fee are hereby dismissed.

Conclusion

I hereby order the landlord to pay the tenants **\$156.30**, and pursuant to section 67 of the *Residential Tenancy Act*, I hereby issue a **monetary order** in favour of the tenants for this amount. Should it be necessary, this order may be served on the landlord, filed in the 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: March 28, 2012.

Residential Tenancy Branch