



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for a monetary order for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, 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 a monetary order under sections 38, 67 and 72 of the *Residential Tenancy Act (the "Act")*?

Background and Evidence

This month to month tenancy began on November 1, 2008, ended on January 31, 2012, monthly rent was \$650.00 and the tenant paid a security deposit of \$325.00 at the beginning of the tenancy on or about October 1, 2008.

The landlord's monetary claim is in the amount of \$494.00, which is comprised of \$120.00 for carpet cleaning, \$75.00 for extra carpet cleaning, \$200.00 for cleaning, \$75.00 for garbage removal and \$24.00 for light bulb replacement.

The landlord's relevant evidence included the tenancy agreement, parts of which I note are illegible, a one page condition inspection report, copies of photographs of the rental

unit, which I note were too dark to view, an invoice for rubbish removal, two invoices for carpet cleaning, an invoice for cleaning and notice of the tenant's forwarding address.

In support of their application, the landlord stated that the carpets were not cleaned by the tenant, which not only caused the landlord to incur costs for cleaning, but that the condition required extra cleaning.

Upon query, the landlord stated that the carpet was between 10-15 years old.

The landlord submitted that the rental unit was not cleaned by the tenant, which required the landlord to have the rental unit cleaned. The landlord confirmed that cleaning was not marked on the condition inspection report.

The landlord stated that the tenant left behind belongings and furniture, which required the landlord to remove them.

The landlord stated that the tenant did not attend a move out inspection. When questioned, the landlord stated that all requests of the tenant to attend a move out inspection were verbal.

In response, the tenant submitted that he was not offered an opportunity for a move out inspection.

The tenant also stated that he hired a cleaner to clean the rental unit at the end of the tenancy and that he met his requirement for leaving the rental unit clean. The tenant pointed out that on the landlord's cleaning receipt evidence, the rental unit listed as being cleaned was not the rental unit and further pointed out that the rental unit did not have a dining room.

The tenant submitted that when he moved in the rental unit had a chair and ottoman, which he left at the end of the tenancy as they were not his personal possessions. The tenant contended that the landlord's invoice did not contain a breakdown of items removed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

Section 35(2) of the Act requires that the landlord offer the tenant 2 opportunities, as prescribed, for the inspection of the rental unit at the end of the tenancy. This requirement is not discretionary.

Section 36(2) of the Act states that the right of a landlord to claim against the security deposit for damages is extinguished if the landlord has not complied with section 35(2).

In the case before me, I find the landlord provided insufficient evidence that the tenant was provided an opportunity to inspect the rental unit at the end of the tenancy, due to the disputed verbal testimony of the parties. I find that disputed verbal testimony does not sufficiently meet the applicant's burden of proof. I therefore find that the landlord's right to make a claim against the tenant's security deposit has been extinguished.

I also find the landlord's evidence to be insufficient that the condition of the rental unit at the end of the tenancy was beyond normal wear and tear, especially after a tenancy which spanned in excess of three years. In reaching this conclusion, I was persuaded by the lack of a notation on the condition inspection report that the rental unit needed cleaning or that the carpet was so dirty that extra cleaning would be needed. I also find that the landlord's invoice evidence lacked sufficient clarity of the work performed by the service people or that any work was necessitated by the actions of the tenant.

Under section 38 (6) of the Act, a landlord may not make a claim against a tenant's security deposit for damages if their right to make such claim has been extinguished.

Due to the extinguishment of the landlord's right to claim against the tenant's security deposit and due to insufficient evidence to support their claim for damages, I dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's application, I do not find they are entitled to recovery of the filing fee.

As I have found that the landlord's right to make an application against the tenant's security deposit for damage to the rental unit has been extinguished, I find that the tenant is entitled to a return of his security deposit, doubled, pursuant to Section 38(6) of the *Act*.

Under authority of Section 67 of the *Act*, I direct the landlord to return the tenant's security deposit, which has now been doubled, and I grant the tenant a monetary order in the amount of \$651.23, comprised of his security deposit of \$325.00, doubled, and interest on \$325.00 of \$1.23.

I am enclosing the monetary order for \$651.23 with the tenant's Decision. This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

Conclusion

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

The tenant is granted a monetary order for \$651.23.

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: May 04, 2012.

Residential Tenancy Branch