



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. Although the photographs submitted by the Landlord in this evidence package were not available to me at the time of the hearing, they were available to me prior to this decision being rendered.

The Tenant submitted no evidence in regards to the matter.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain a portion of the security deposit in compensation for damage to the rental unit and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that they entered into a tenancy agreement that began on April 01, 2011 and required the Tenant to vacate the unit by September 01, 2011; that they entered into a new written tenancy agreement that began on September 01, 2011; that the agreement granted the Tenant sole use of one bedroom and shared use of common areas in the house; that a bed was supplied with the rental unit; that the tenancy ended on April 30, 2012; and that the Landlord received the Tenant's forwarding address, in writing, on April 30, 2012.

The female Landlord stated that the Tenant paid a security deposit of \$275.00. The Tenant stated that he does not recall the amount of the security deposit he paid. The Tenant stated that he believes \$25.00 of his security deposit was returned at some point during the tenancy. The female Landlord stated that none of the deposit has been returned, although the Tenant was given a \$100.00 rent refund during this tenancy and she believes the Tenant may mistakenly believe this was a refund of a portion of his security deposit.

The Agent for the Landlord stated that she and the Tenant inspected the rental unit on September 03, 2012; that limited information was recorded on this report as the residential complex was in good condition; and that both parties signed this report. The Agent for the Landlord stated that she and the Tenant signed a new inspection report at the start of the second tenancy and that no information regarding the condition of the unit was recorded on the second report, as the residential complex was in good condition.

The Tenant stated that they did not jointly inspect the rental unit but he agrees that he signed both aforementioned reports to indicate that the reports fairly represented the condition of the rental unit.

The Landlord and the Tenant agree that a condition inspection report was completed on April 30, 2012, which the Tenant signed to indicate he did not agree with the content of the report.

The Landlord is seeking compensation, in the amount of \$40.00, for cleaning the carpet in the bedroom used by the Tenant. The female Landlord stated that the carpet was dirty and needed to be shampooed at the end of the tenancy. The Tenant stated that he vacuumed the carpet; that he did not shampoo the carpet at any point during his tenancy; and that he did not shampoo the carpet at the end of the tenancy because the tenancy agreement did not require him to shampoo the carpet. The Landlord submitted a receipt to show that \$44.80 was paid to clean the carpet.

The Landlord is seeking compensation, in the amount of \$72.80, for cleaning the mattress used by the Tenant. The Landlord contends that the mattress was stained during the tenancy. Photographs of the stained mattress were submitted in evidence. The female Landlord stated that the mattress was purchased in May of 2010; that it was stored in the basement; that it had not been used prior to this tenancy; and that it was not stained prior to the start of the tenancy.

The Agent for the Landlord stated that sometime in December of 2011 she observed the Tenant spill approximately ¼ cup of coffee on the bed.

The Tenant stated that the mattress was stained prior to the start of the tenancy. Tenancy; that he did not stain the mattress; and that the stain that can be seen on the mattress is not consistent with a coffee spill.

The male Landlord contends that the stain is consistent with a liquid being spilled on the mattress and dripping onto the box spring, which was covered with plastic, and then “wicking” along the mattress.

Analysis

I find that the Tenant paid a security deposit of \$275.00. I based this conclusion, in part, on the testimony of the female Landlord, who was certain of the amount paid, and who was certain that no amount of the deposit has been returned. I based this conclusion, in part, on the copy of the tenancy agreement that was submitted in evidence, which indicates a \$275.00 deposit was made. In determining this issue, I placed little weight on the testimony of the Tenant, as he could not recall how much of a security deposit he paid and he was uncertain if a portion of that deposit had been returned.

Residential Tenancy Policy Guidelines state that “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. I concur with this guideline. As this tenancy was for 13 months and the Tenant acknowledged that he never shampooed the carpets, I find that he should have shampooed the carpet at the end of the tenancy. I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act (Act)* when he failed to leave the carpet in clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for damages that flow from the Tenant’s failure to comply with the *Act*. As the Landlord has submitted evidence to show that the Landlord paid more than \$40.00 to shampoo the carpet, I find that the Landlord is entitled to the full amount of the \$40.00 claim.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proof rests with the Landlord and I find that the Landlord has submitted insufficient evidence to show that the Tenant damaged the mattress in the rental unit. In reaching this conclusion I specifically note that the Landlord’s testimony that the mattress was new at the start of the tenancy was directly refuted by the Tenant’s testimony that the mattress was stained prior to the start of the tenancy.

In determining this matter I placed little weight on the condition inspection report that was signed at the start of the tenancy that began on September 01, 2011, as it is completely lacking in detail. For this report to have evidentiary value, it should either indicate that the rental unit and contents are in “good condition” or it should outline specific deficiencies. A report that does not provide any descriptors of the condition of the unit does not, in my view, assist in determining the condition of the rental unit at the time of the inspection.

I find that the photographs of the mattress that were submitted in evidence do not corroborate the Landlord’s claim. As the staining appears at the bottom of the mattress and there are no stains that would cause me to conclude that liquid dripped down the

side of the mattress, I am not convinced that this stain was caused by a spill. As the stains appear on the bottom of the mattress, I find it entirely possible that this mattress was stained during storage. I therefore dismiss the Landlord's claim for compensation for cleaning the mattress.

I find that the Landlord's application has some merit and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$90.00, which is comprised of \$40.00 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. I authorize the Landlord to retain this amount from the Tenant's security deposit and I order the Landlord to return the remaining \$185.00 of the deposit.

Based on these determinations I grant the Tenant a monetary Order for the amount \$185.00. In the event that the Tenant does 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.

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: July 19, 2012.

Residential Tenancy Branch