



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed May 8, 2012: MNSD; FF

Landlord's application filed June 1, 2012: MND; MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks a monetary award in the equivalent of double the amount of the security deposit; and to recover the cost of the filing fee from the Landlord.

The Landlord seeks a monetary award for damages to the rental unit; compensation for damage or loss under the Act regulation or tenancy agreement; to set off the security deposit in partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

It was established that the Tenant served the Landlord with his Notice of Hearing documents by registered mail, sent May 10, 2012. The Tenant did not provide any documentary evidence.

It was also established that the Landlord served the Tenant with her Notice of Hearing documents by registered mail, sent June 7, 2012. The Landlord enclosed copies of her documentary evidence in the registered package, with the exception of copies of her banking statements and a photograph of the rental unit which also showed a photograph of the Landlord. The Landlord stated that she did not include copies of those documents in the Tenant's package because of privacy reasons. Therefore, I have considered the Landlord's documentary evidence with the exception of the items that were excluded from the Tenant's copies.

Preliminary Matters

The Tenant's Application for Dispute Resolution named another party as an Applicant (the "Occupant"). It was determined that the Occupant was not a party to the written tenancy agreement and that the Occupant paid rent to the Tenant, who then paid rent directly to the Landlord. Therefore, I find that the Occupant was not the Landlord's "tenant". The Dispute Resolution process decides issues between Landlords and

Tenants. Occupants have no rights or responsibilities under a tenancy agreement and I amended the Tenant's application to remove the Occupant as an Applicant.

Issues to be Decided

1. Is the Tenant entitled to compensation pursuant to the provisions of Section 38(6) of the Act?
2. Is the Landlord entitled to a monetary award for damages and the cost of cleaning the rental unit at the end of the tenancy?

Background and Evidence

This tenancy started on May 30, 2011. The Tenant moved out of the rental unit on April 29, 2012. The Occupant moved out on May 1, 2012. Rent was \$1,470.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$735.00 on May 1, 2011. The security deposit remains with the Landlord.

The Tenant provided the following testimony:

The Tenant testified that there was no move-in condition inspection performed at the beginning of the tenancy and that the Landlord completed the move-out inspection on her own.

The Tenant stated that he provided his forwarding address in writing to the new occupants of the rental unit "a couple of days" after he moved out.

The Tenant testified that he did not agree that the Landlord could keep any of the security deposit.

The Tenant testified that he spent two hours cleaning the rental unit at the end of the tenancy.

The Occupant testified that she also cleaned the rental unit while she was trying to pack. She stated that she wiped down all the counters and inside the cupboards, but that she forgot a few things in the cupboards. The Occupant testified that the carpets were not vacuumed or shampooed and that she did not wash the floors because she ran out of time and the new occupants were moving in right away.

The Landlord provided the following testimony:

The Landlord testified that she did not receive the Tenant's forwarding address until she was served with the Tenant's Application for Dispute Resolution.

She stated that she was surprised when the Tenant gave his notice that he was moving out at the end of April because she expected him to stay longer. She stated that she was due to have a baby on April 17, 2012, and so she scrambled to get new tenants. The Landlord stated that the new tenants expected to move into the rental unit at 1:00 p.m. on May 1, 2012.

The Landlord testified that the Occupant called her on April 30, 2012, advising that she could not be out of the rental unit until the morning of May 1, 2012. The Landlord stated she called the Occupant at 8:00 a.m. on May 1st and the Occupant told her she would be out at noon. When the Landlord arrived at the rental unit at noon, the Occupant was still not finished moving and cleaning. The Landlord testified that the Tenant did not show up for the move-out condition inspection as previously arranged. The Landlord testified that the Tenant and the Occupant were moving out because they had split up and therefore she did not think it appropriate for the Occupant to take part in the formal move out inspection, but she did a walk through with the Occupant.

The Landlord testified that the Tenant and the Occupant did not leave the rental unit in a reasonably clean condition at the end of the tenancy and that they caused damage to the rental unit. The Landlord seeks a monetary award, calculated as follows:

Cost to shampoo carpet	\$130.00
Cleaning	\$225.00
Touch up paint and filling holes on walls and baseboards	\$200.00
Repairing closet doors in bedroom	\$50.00
Replacing laundry closet door	\$100.00
Repairing cupboard door	\$20.00
Replacing scratched ceramic cooktop	\$900.00
Reimburse cost of photocopies and photo development	\$17.00

The Landlord provided copies of e-mails, photographs and invoices in support of her application.

The Tenant provided the following reply:

The Tenant disputed the Landlord's damage claim and stated that the Landlord

provided e-mails in evidence that indicate that some of the damages were normal wear and tear. He denied causing damage to the cooktop.

Analysis

1. Is the Tenant entitled to compensation pursuant to the provisions of Section 38(6) of the Act?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord must pay the tenant double the amount of the security deposit.

Section 88 of the Act provides for ways that documents **must** be given or served documents generally. I find that the Tenant did not provide the Landlord with his forwarding address in writing in accordance with the provisions of Section 88. Providing the document to the Landlord's new tenant is not an acceptable method of service.

Therefore, I find that at the time the Tenant filed his Application for Dispute Resolution, he had not provided the Landlord with his forwarding address in writing and therefore his application for compensation under Section 38(6) of the Act is dismissed.

Section 24(2) of the Act provides that the Landlord's right to claim against a security deposit is extinguished if the Landlord does not complete a condition inspection report with the Tenant at the beginning of the tenancy. Based on the testimony of both parties, I find that the Landlord did not complete a move-in condition inspection and therefore the Tenant is entitled to return of the security deposit in the amount of **\$735.00**.

2. Is the Landlord entitled to a monetary award for damages and the cost of cleaning the rental unit at the end of the tenancy?

The Landlord's right to claim against the security deposit is extinguished, however the Landlord retains the right to claim for damages under Section 67 of the Act. The

Landlord has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlords to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the Landlord's claim with respect to recovery of the costs of developing photographs and photocopying her evidentiary materials as these are not costs that are contemplated or recoverable under the provisions of the Act.

The Tenant is responsible for damages caused by himself and the Occupant. The Occupant agreed that the carpets were not shampooed, the floors were not washed and that she left items in the cupboard. When a person is packing to move, I find it unlikely that the cupboards would be wiped down and then the items replaced. The Landlord provided a receipt for carpet cleaning in the amount of \$95.20, dated May 10, 2011. Therefore, I am satisfied that the carpets were professionally cleaned at the beginning of the tenancy. The Landlord did not provide a receipt for carpet cleaning at the end of the tenancy and therefore, I allow \$95.30 for the cost of cleaning the carpet at the end of the tenancy. I find the Landlord's claim for cleaning in the amount of \$225.00 is reasonable. This portion of the Landlord's claim is allowed in the amount of **\$320.20**.

The Landlord provided a copy of an e-mail from the Tenant dated May 31, 2011, indicating that he was "thinking of taking the closet doors off in the bedroom" and putting a dresser in the closet to free up some room. Another e-mail from the Tenant dated July 5, 2011, indicates that he "had a bit of an accident with the closet door for the washer/dryer while moving things around and we are going to have to replace it". I am satisfied that the Tenant damaged the closet doors in the bedroom and the laundry closet door and caused minor damage to the walls and baseboards. This portion of the Landlord's claim is allowed in the amount of **\$350.00** (\$200 for touch up paint and filling holes, \$50.00 to repair bedroom closet door, and \$100.00 to replace laundry closet door).

I find that the Landlord has not provided sufficient evidence to prove her claim for the cost of repairing a cupboard door (\$20.00) or for replacing the ceramic cook top (\$900.00). With respect to the stove cook top, I accept that one element was scratched, however there was no condition inspection report prepared at the beginning of the tenancy to indicate the condition of the cook top at the beginning of the tenancy. Therefore these portions of the Landlord's claim are dismissed.

Set-off of monetary awards

Both parties have been partially successful in their applications, and I order the parties to bear the cost of filing their own applications.

I hereby set-off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant with a Monetary Order for the balance, in the amount of **\$64.80**.

Conclusion

The Tenant has established a monetary award of **\$735.00**.

The Landlord has established a monetary award of **\$670.20**.

I hereby set-off the Landlord's monetary award against the Tenant's monetary award and provide the Tenant with a Monetary Order for the balance, in the amount of **\$64.80** for service upon the Landlord. This Order may be filed in the Provincial Court 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