



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application filed May 23, 2012: MND; MNSD; FF

Tenant's application filed May 24, 2012: MNSD; MNDC; FF

Introduction

This Hearing was convened to consider cross applications. The Landlord seeks a Monetary Order for damages to the rental unit; to apply the security deposit in satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The Tenant seeks return of the security deposit; compensation for damage or loss under the Residential Tenancy Act (the "Act"); and to recover the cost of the filing fee from the Landlord.

Both parties signed into the teleconference and gave affirmed testimony.

Issues to be Decided

1. Are the Landlords entitled to a monetary award for cleaning and painting the rental unit at the end of the tenancy? If so, may the Landlord apply a portion of the security deposit towards her monetary award?
2. Is the Tenant entitled to return of the security deposit and compensation pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy began on May 1, 2011 and ended on April 30, 2012. Monthly rent was \$1,050.00. In addition to rent, the Tenants paid utilities in the amount of \$150.00. A security deposit on \$525.00 was paid on May 1, 2011.

The Tenant testified that he mailed the Landlord the Tenants' forwarding address on May 3, 2012. The Landlord acknowledged receiving the Tenants' forwarding address in writing on May 8, 2012.

The Landlord provided the following testimony:

- The Landlord met with the Tenants on April 30, 2012 at 1:00 p.m. to conduct a move-out Condition Inspection. The Tenants were still moving, but ready for inspection.
- The male Tenant became agitated and walked out when the Landlord told him things were dirty or damaged. The female Tenant remained for a few minutes until the male Tenant returned and said “we’re going”.
- The Landlord carried on with the inspection in the Tenants’ absence and took photographs, which were provided in evidence.
- Later on the Tenants returned and took their bed and some other items, but left their dining suite, garbage and recycling behind. They placed their dining suite on the street with a “free” sign on it.
- The Tenants did not clean the rental unit before moving out. The Landlord seeks to recover the cost hiring a cleaner (9 hours @\$15.00 per hour = \$135.00). A copy of the cleaner’s invoice was provided in evidence.
- The Landlord also seeks to recover the cost of touching up some paint, cleaning up the alley way and disposing of the Tenant’s discarded TV. The Landlord provided a copy of an invoice for these services in the amount of \$224.00.
- The Landlord testified that the rental unit had been repainted in 2007.

The Tenant provided the following testimony:

- At the beginning of the tenancy, the Landlord told the Tenants that she would paint the rental unit but it was not done.
- The Tenants shampooed the carpets and cleaned the rental unit at the end of the tenancy. They only had 4 hours to move and clean because they were rushed to get out. They left it in a cleaner state than when they moved in. The Tenants forgot to wipe out the washer and dryer, but the rental unit was empty of their furniture so the Tenant does not believe it took 9 hours to clean it.
- The fridge and stove were not pulled out at the beginning of the tenancy and the Tenant doubts that they were cleaned underneath before the Tenants moved in.
- The Tenants had no use of the garden shed as it was locked for the entire tenancy. Therefore, none of the junk in the shed was theirs.
- The picture of items left on the deck must have been taken before they finished moving out. The Tenants took all of those items with them.
- The Tenant acknowledged leaving the TV on the lawn when they moved out.
- The only garbage left behind was placed in the garbage bins. The City picks up garbage weekly.

Analysis

Regarding the Tenant’s claim for double the amount of the security deposit:

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 (which ever date last occurs), 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.

The Landlord testified that she received the Tenant's forwarding address in writing on May 8, 2012. The Landlord filed for dispute resolution against the security deposit on May 23, 2012, which was the last day allowed pursuant to Section 38(1) of the Act. Therefore, I find that the Tenant is not entitled to compensation pursuant to the provisions of Section 38(6) of the Act.

Regarding the Landlord's claim for damages:

Section 37 of the Act requires tenants to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear at the end of a tenancy. It also provides that tenants must vacate the rental unit by 1 p.m. on the day that the tenancy ends.

The Tenant acknowledged that he had not wiped down the washer and dryer. Based on the photographic evidence provided, I find that the Tenants did not leave the oven in a reasonably clean condition. The Landlord testified that it was a self-clean oven, so minimal effort is required to clean it. I also find that the photos show that there was other minor cleaning necessary to bring the rental unit to "reasonably clean". A landlord can choose to clean to a higher standard for the next occupant, but the tenant is not liable for paying for it. Therefore, I allow the Landlord's claim for cleaning costs at **\$45.00** (3 hours at \$15.00).

The Tenant acknowledged that he left the TV behind after move-out was complete. Therefore I allow the Landlord's claim for disposing of the TV in the amount of **\$28.00** (\$25.00 + \$3.00 HST, per the invoice).

I dismiss the remainder of the Landlord's claim. The move-in Condition Inspection Report clearly shows that at least some walls required painting at the beginning of the tenancy. The Residential Tenancy Branch Policy Guidelines provide a useful life of 4 years for indoor paint and the Landlord testified that the rental unit was last painted in 2007.

The Landlord has established a total monetary award of **\$73.00**. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$73.00 from the security deposit in satisfaction of her monetary award. **I hereby order the Landlord to return the balance of the security deposit in the amount of \$452.00 to the Tenant immediately.**

The parties have both been partially successful in their claims, and I order that they each bear their own cost of the filing fee.

Conclusion

I hereby provide the Tenant a Monetary Order in the amount of **\$452.00**. 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: August 07, 2012.

Residential Tenancy Branch

