



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord requested compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

One of the 2 co-tenants submitted an application requesting return of the deposit paid.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

The 2nd co-tenant was served with Notice of the landlord's hearing via registered mail to the written forwarding address provide on August 2, 2012. A copy of the Canada Post receipt and tracking number was supplied. I determined that this tenant was served with notice of the hearing on the 5th day after mailing.

Issue(s) to be Decided

Is the landlord entitled to compensation in for carpet cleaning in the sum of \$168.00 and a move-out fee of \$250.00?

Is the tenant entitled to return of the deposit?

Is the landlord entitled to the filing fee cost?

Background and Evidence

The parties agreed that the tenancy commenced on August 1, 2011, rent was \$1,550.00 due on the first day of each month. A deposit in the sum of \$775.00 was paid. The tenants vacated the unit on July 31, 2012.

A copy of the signed tenancy agreement was supplied which included a term that the tenants would pay the move-in and move-out fees in the sum of \$250.00 each. The tenancy included a term that the carpets should be professionally cleaned at the end of the tenancy.

Neither a move-in or move-out condition inspection report was completed. The parties agreed that at the start of the tenancy the tenants cleaned the unit and were reimbursed.

The landlord supplied a copy of a carpet cleaning invoice issued on August 8, 2012, in the sum of \$168.00. The landlord has paid the strata fee; the tenant acknowledged she did not pay the move-out fee.

The landlord confirmed receipt of the tenant's written forwarding address, supplied via email sent on August 2, 2012. The parties had a history of communicating via email. The landlord did not return the deposit but applied claiming against the deposit on August 15, 2012.

Analysis

Sections 23 and 24 of the Act provide:

Condition inspection: start of tenancy or new pet

23 (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*

(2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*

(a) *the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*

(b) *a previous inspection was not completed under subsection (1).*

(3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) *The landlord must make the inspection and complete and sign the report without the tenant if*

(a) *the landlord has complied with subsection (3), and*

(b) *the tenant does not participate on either occasion.*

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection]

(Emphasis added)

The Act then provides:

Return of security deposit and pet damage deposit

38 (5) *The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been **extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements]** or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*

(6) *If a landlord does not comply with subsection (1), the landlord*

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

Therefore, as the landlord failed to complete a move-in condition inspection report, I find that his right to claim against the deposit for damages was extinguished. The landlord was then required to return the deposit to the tenants within 15 days of receipt of the written forwarding address, that the landlord confirmed he received on August 2, 2012. The landlord had up to 2 years beyond the end date of the tenancy to submit a claim for damages, but the right to claim against the deposit was extinguished.

Therefore, I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the deposit paid; \$1,550.00.

As provided by the tenancy agreement, I find that the landlord is entitled to carpet cleaning costs in the sum of \$168.00 plus the move-out fee paid by the landlord in the sum of \$250.00. As a term of the tenancy agreement the tenants had agreed to pay the fee and to have the carpets professionally cleaned; they did not do so.

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

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$468.00 in satisfaction of the monetary claim.

The landlord is Ordered to return the balance of the deposit; \$1,082.00 to the tenants, forthwith. A monetary Order has been issued to the tenants.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$468.00, which is comprised of cleaning, a moving fee and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The tenant is entitled to return of double the deposit, in the sum of \$1,550.00.

The landlord will be retaining the tenant's security deposit in the amount of \$468.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary Order for the balance of the deposit in the sum of \$1,082.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 18, 2012.
