



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to cross applications.

On August 02, 2012 the Tenant filed Application for Dispute Resolution, in which the Tenant applied for the return of double the security deposit and to recover the filing fee from the Landlord for the cost of filing this application.

On August 02, 2012 the Landlord filed Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit and to recover the filing fee from the Tenant for the cost of filing this application.

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 to me.

With the consent of all parties present at the hearing, the Landlord's Application for Dispute Resolution has been amended to reflect the correct spelling of the female Landlord's name.

Preliminary Matter

On the Landlord's Application for Dispute Resolution the Landlord declared it was seeking a monetary Order in the amount of \$1,600.00. In the "Details of Dispute" section of the Application for Dispute Resolution the Landlord declared that it is asking for payment for "all damages to the rental unit. We had to fix all damages as agreed by tenant took longer than the 15 days". The Landlord does not provide any details of the alleged damages on the Application for Dispute Resolution.

In the evidence package the Landlord submitted to the Residential Tenancy Branch the Landlord submitted receipts that total \$2,378.84. The Landlord did not submit a detailed list of claims on the Application for Dispute Resolution or with the documents submitted to the Residential Tenancy Branch.

The male Tenant stated that they did not understand the specifics of the Landlord's claims for compensation.

Section 59(2)(b) of the *Residential Tenancy Act (Act)* stipulates that an Application for Dispute Resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. I find that the Landlord's Application for Dispute Resolution does not provide full details of the Landlord's dispute. In reaching this conclusion I was heavily influenced by the fact the Landlord claimed compensation of \$1,600.00 and that the Landlord has provided receipts that far exceed this claim. More importantly, I find that the Landlord had provided insufficient details of his monetary claim in the Application for Dispute Resolution: the Landlord did not declare the items that are allegedly damaged nor did the Landlord declare the amount of compensation being sought for each damaged item.

Given that the Landlord has provided insufficient details of the monetary claim, I find that it would be prejudicial to the Tenant to proceed with the Landlord's claim, as it impairs the Tenant's ability to prepare a response to the claims. I therefore dismiss the Landlord's Application for Dispute Resolution, with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to the return of the security deposit?

Is the Tenant entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2011; that the monthly rent was \$2,500.00; that the Tenant paid a security deposit of \$2,500.00; that the tenancy ended on June 30, 2012; that the Tenant applied \$1,250.00 of the security deposit to rent for June of 2012; and that the Landlord did not return any portion of the remaining security deposit.

The male Landlord stated that the Landlord has not filed an Application for Dispute Resolution seeking to retain any portion of the security deposit.

The Landlord and the Tenant agree that a condition inspection report was completed on June 30, 2012. The female Landlord stated that a copy of this report was mailed to the Tenant as evidence for these proceedings on September 04, 2012 with the Application for Dispute Resolution. The male Tenant stated that no evidence was received with the Application for Dispute Resolution.

The Landlord and the Tenant agree that during the condition inspection the male Tenant agreed that the Tenant would compensate the Landlord for the cost of cleaning the carpets and couches; and to repair a spot on the hardwood flooring. The parties agree that this agreement was written on the condition inspection report and was initialled by the Landlord and the Tenant.

The Tenant stated that the above agreement was contingent on the Landlord providing the Tenant with receipts for the cleaning/repairs, at which time the Landlord could retain that amount from the security deposit. The male Landlord agrees that the notation on the condition inspection report reads: "will get bill for cleaning and floor repair and let Dan know and will come out of damage deposit". The Landlord and the Tenant agree that the Landlord did not provide the Tenant with receipts for the cleaning/repairs.

The Landlord and the Tenant agree that the Landlord was provided with the Tenant's forwarding address, via email, on June 05, 2012.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord held a security deposit of \$1,250.00 at the end of the tenancy; that the Landlord has not returned any portion of the security deposit that remained at the end of the tenancy; and that the Landlord has never filed an Application for Dispute Resolution in which the Landlord applied to retain the security deposit.

Section 38(4)(a) of the *Act* stipulates that a landlord may retain "an amount" from a security deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain "the amount" to pay a liability or obligation of the tenant. While I accept that the Tenant agreed, in writing, to pay for cleaning the carpet and couches and for repairing damage to the hardwood floor, I find that they did not agree on an amount. As the parties did not agree on an amount that could be deducted from the security deposit, I find that the Landlord did not have written authority to retain any amount from the security deposit, pursuant to section 38(4)(a) of the *Act*.

On the basis of the undisputed evidence presented at the hearing, I find that this tenancy ended on June 30, 2012 and that the Tenant provided the Landlord with a forwarding address, in writing, on June 05, 2012.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section 38(1), as the Landlord has not repaid the full security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that remained at the end of the tenancy.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is, therefore, entitled to compensation for the cost of filing that Application.

Conclusion

I find that the Tenant has established a monetary claim of \$2,550.00, which is comprised of double the security deposit that remained at the end of the tenancy and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be 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: October 30, 2012.

Residential Tenancy Branch