



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of the pet and security deposits paid; less \$75.00 that has been previously returned.

The landlord applied to retain the deposits.

Both parties were present at the hearing and confirmed receipt of the other's hearing package.

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.

Preliminary Matters

The landlord applied to retain the deposit; in the monetary order section of the application the only notation was the request to retain the deposits. In the details of the dispute section of the application the landlord indicated that he was making a claim for compensation as a result of damage to the rental unit.

The landlord explained that he had not submitted any evidence as he has been through a family situation that caused him delays. The landlord said he wished to proceed with the hearing via testimony.

The landlord's application did not include any reference to a claim for compensation for damage or loss; therefore I considered a claim for drywall costs in the sum of \$375.00 and cleaning in the sum of \$75.00. These are costs the tenant stated had been included in a summary of the claim given to her by the landlord.

Issue(s) to be Decided

Is the tenant entitled to return of the pet and security deposits paid?

Is the landlord entitled to compensation in the sum of \$450.00 for damage to the unit?

Background and Evidence

The tenancy commenced in October 2007; in approximately July 2012, the landlord purchased the property and continued to use the previous agent to manage the tenancy. At the start of the tenancy the tenant paid a pet deposit and security deposit in the sum of \$375.00 each.

A move-in condition inspection report was completed.

The tenant confirmed that she vacated the rental unit effective August, 9 2012.

The landlord said there was a previous hearing, arranged by his agent. At that hearing the landlord was issued an Order of possession for the unit. The landlord could not say if he ever served the tenant with the Order. The tenant said she was only given a note telling her to move out, but she did not dispute that a hearing had been held that resulted in an Order for the landlord.

The landlord and tenant agreed that they were to meet at 7 p.m. on August 9, 2012. The tenant was at the unit but the landlord did not arrive. The landlord confirmed that he had written a note on the drywall, telling the tenant everything looked good. The landlord could not be at the unit, as a result of a serious family situation. The tenant said she did leave some items behind, but that she had vacated on the 9th.

The landlord confirmed receipt of the tenant's forwarding address on August 14, 2012. Within fifteen days the landlord applied claiming against the deposits for damage to the unit. The landlord confirmed that he was going to complete fairly extensive renovations to the unit, so he did not expect the unit to be thoroughly cleaned. The landlord confirmed he was not claiming compensation for any damage caused by a pet.

The tenant agreed that some damage occurred to drywall; she said that \$200.00 should cover the cost of repair. The landlord said he is a professional dry-waller and that his claim in the sum of \$375.00 was very reasonable, as numerous areas of the walls were badly damaged.

The landlord claimed \$75.00 for cleaning of appliances. The tenant agreed that she did not clean the fridge and that \$25.00 would be reasonable for cleaning costs.

No invoices or receipts for the amounts claimed were supplied.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Based on the testimony given I find, pursuant to section 44 of the Act, that the tenancy ended on August 9, 2012, when the tenant vacated the unit.

I find that on August 9, 2012, the parties intended to meet to complete some sort of inspection of the rental unit. Even if I find that this was for the purpose of a move-out inspection, the landlord did not attend.

In the absence of any verification of the amounts claimed I find that the landlord is entitled to compensation for drywall damage in the sum of \$200.00 and cleaning costs in the sum of \$25.00. I have based this decision on the tenant's acknowledgement during the hearing that there was drywall damage and that she did not clean the fridge. The amounts I find the landlord is entitled to are based on estimates provided by the tenant and are what I find nominal, in the absence of verification of that claimed.

Section 38(7) of the act provides:

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

There was no evidence before me that the landlord had any previous orders allowing retention of the pet deposit.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposits or make an application for dispute resolution claiming against the deposits. If the landlord does not make a claim against the deposits paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposits.

As the landlord received the tenant's forwarding address on August 14, 2012, and did not return the pet deposit within fifteen days, I find, pursuant to section 38(6) of the Act, the landlord must repay the tenant double the \$375.00 pet deposit plus interest in the sum of \$7.07.

In relation to the security deposit, the landlord did set a time to meet with the tenant to complete a move-out inspection and the landlord left a note indicating that everything was fine, which I can accept was written notice that the unit was in an acceptable state.

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.

Therefore, I find that the landlord may retain the following from the security deposit:

- \$200.00 for drywall damage repair;
- \$25.00 for fridge cleaning; and
- The \$50.00 filing fee.

The balance of the landlord's claim for damage is dismissed.

The tenant is entitled to a monetary Order in the sum of \$789.14, which is comprised of:

- \$750.00 - double the pet deposit;
- \$25.00 - balance of security deposit (\$375.00 - \$275.00 owed to the landlord and \$75.00 previously returned); plus
- \$14.14 interest.

Based on these determinations I grant the tenant a monetary Order in the sum of \$789.14. 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.

I did not consider any claim for loss of rent revenue as this was not included in the landlord's claim.

Conclusion

The tenant has established a monetary claim, in the amount of \$789.14.

The landlord has established a monetary claim in the amount of \$275.00.

The landlord is entitled to filing fee costs.

The balance of the landlord's application is dismissed.

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: November 07, 2012.

Residential Tenancy Branch