



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The landlord's agent said that the tenants were served additional evidence, by way of a letter of claim; however, this evidence was not submitted to the Residential Tenancy Branch ("RTB"). The tenant confirmed receipt of this letter and as such, submitted a written response to each claim item. I therefore was able to determine the breakdown of the landlord's claim.

As to the tenant's evidence, the landlord's agent said that she did not have a copy of the evidence; however, the tenant supplied evidence of personal delivery and I therefore have accepted their evidence.

I note that during the course of the hearing, information became available about the landlord. The landlord lives out of the country for 11 months of the year, routinely returning in July each year. The landlord's agent apparently does not have much communication with the landlord, although the landlord's agent confirmed that she was appointed to represent the landlord and had full knowledge of the alleged facts and circumstances in this matter.

Issue(s) to be Decided

Is the landlord entitled to a monetary order, authority to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began March 14, 2007, ended on September 15, 2012, beginning monthly rent was \$2300.00, ending monthly rent was \$2700.00 and the tenants paid a security deposit of \$1150.00 at the beginning of the tenancy.

I also heard undisputed evidence from the tenant that the tenant gave the landlord their written forwarding address on September 13, 2012, and has not returned any portion of the security deposit. I note that the landlord did file an application for dispute resolution against the tenant within 15 days of the end of the tenancy, which would confirm the tenant's testimony.

The landlord's monetary claim is \$1600.00, as follows: \$850.00 for torn carpet in the solarium, \$200.00 for damaged paint, damaged wall not sanded or painted, damaged blinds for \$100.00, damaged linoleum floor for \$130.00 and a broken vacuum for \$150.00.

In response to each of the claimed items, the landlord's agent confirmed that as of the day of the hearing, the landlord has not paid to have any of the claimed items attended to, as there were only quotes for some of the items. Additionally, the landlord's agent confirmed that the carpet, paint, walls, blinds and flooring were original to the home. The landlord's agent had no knowledge of the age of the home; however the tenant who said the home was built in 1979.

In response to my question, the landlord's agent confirmed that there was no move in condition inspection report at the beginning of the tenancy. I was not provided a move out condition inspection report and heard tenancy that the landlord attempted a meeting within 2 weeks following the end of the tenancy.

The tenant submitted that the carpet was very old, had hardly been used by the tenant, and had been exposed to substantial water damage from a leaking window prior to the landlord having it fixed.

The tenant denied any damage to the paint and wall, except that that a hole was filled and sanded. The tenant contended that they attempted to have the wall properly painted in that area before the end of the tenancy, but that the landlord responded by saying the tenant should paint the entire house.

The tenant also said that any alleged damage to the blinds or flooring was through reasonable wear and tear.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In reviewing the evidence, I find the landlord submitted insufficient evidence to meet the first step of her burden of proof as there was no evidence that the landlord had suffered a loss. The landlord's agent said that she had in her possession some quotes, and even though a quote is not proof of a loss, the landlord failed to supply even the quotes.

Additionally RTB Guidelines 40 provides a table for the useful life of Building Elements. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. I find that the items claimed for, the carpet, wall, floors and painting, had all surpassed their useful life and therefore I find that they were fully depreciated.

As I find that the landlord has not met her burden of proof and that any item alleged to have damage had reached their useful life, I dismiss the landlord's claim of \$1600.00 for damage to the rental unit, without leave to reapply.

As I have dismissed the landlord's claim, I also dismiss her request for recovery of the filing fee.

I next considered the matter of the tenant's security deposit.

Under sections 24 and 36 of the Act, when a landlord fails to conduct a condition inspection and to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenant's written forwarding address, according to section 38 of the Act.

In the case before me, the undisputed evidence shows that the tenant communicated his written forwarding address on September 13 and the last day of the tenancy was September 15, 2012. Therefore the landlord was required to return the full amount to the tenant by September 30, 2012.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and she failed to return the tenant's security deposit within 15 days of having received the tenant's written forwarding address, section 38 of the Act requires that the landlord pay the tenant double the amount of his security deposit of \$1150.00.

I therefore find the tenant is entitled to a monetary order in the amount of \$2331.26, comprised of his security deposit of \$1150.00, doubled, and interest on the original security deposit of \$31.26.

I grant the tenant a final, legally binding monetary order in the amount of \$2331.26, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant is granted a monetary order in the amount of \$2331.26.

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* and is being mailed to both the applicant and the respondent.

Dated: December 18, 2012.

Residential Tenancy Branch