



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On December 19, 2012 the Landlord filed an Application for Dispute Resolution in which the Landlord applied for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

On October 01, 2012 the Tenant filed an Application for Dispute Resolution in which the Tenant applied for the return of the security deposit.

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.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant submitted no documentary evidence.

Issue(s) to be Decided

Is Landlord is entitled to compensation for damages; should the security deposit be retain by the Landlord or returned to the Tenant; and is the Landlord entitled to recover the filing fee for the cost of this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 12, 2011 and ended on September 01, 2012; that the Tenant paid a security deposit of \$688.00; that a condition inspection report was completed at the beginning and the end of this tenancy; that the Tenant provided the Landlord with a forwarding address on the final condition inspection report, which was completed on August 31, 2012; that on the condition inspection report the Tenant agreed that the Landlord could retain an unspecified amount from the security deposit for cleaning; and that the Landlord returned \$105.60 of the security deposit on, or about, September 13, 2012.

The Tenant is seeking the return of a \$25.00 fee for a building access card. The Agent for the Landlord with the initials "D.B." agreed that the Tenant is entitled to the return of this fee.

The Landlord is seeking compensation, in the amount of \$100.80, for cleaning the rental unit. The Landlord submitted a receipt to show this expense was incurred. The Landlord submitted a copy of the condition inspection report that was completed at the end of the tenancy. The report indicates that cleaning is required in the bathroom, that the carpets need cleaning, and that dusting is needed.

The male Tenant has signed the report to indicate that he agrees with the content of the report. At the hearing the male Tenant stated that he did not believe additional cleaning was required at the end of the tenancy. He stated that when the rental unit was inspected at the end of the tenancy he verbally agreed that the Landlord could retain between \$60.00 and \$80.00 for cleaning.

The Tenant stated he had been having intermittent problems with the lock and that sometime in November or December of 2011 he was unable to unlock his door, so he reported the problem to a representative of the Landlord.

The Agent for the Landlord with the initials "V.J." stated that on December 23, 2011 the Landlord received a telephone call from the male Tenant, who advised him that the lock to his rental unit was malfunctioning. She stated that an agent for the Landlord called a lock company without attending at the rental unit to ascertain the nature of the problem. She stated that the company subsequently advised her that the lock was functioning properly when it was inspected; that the Tenant was impaired when the technician arrived at the rental unit; and that the Tenant insisted that the lock be exchanged.

The Landlord submitted an email from the company that replaced the lock, in which the author of the email confirmed that the technician determined that the lock was functioning properly upon inspection and that the lock was exchanged with the consent of a representative of the landlord.

The Landlord submitted no evidence to corroborate the testimony that the Tenant was impaired when the technician examined the lock. The Tenant stated that he was not impaired at the time of the incident.

Analysis

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 or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the full security deposit or file an

Application for Dispute Resolution within fifteen days of the tenancy ending and within fifteen days of the date the Landlord received a forwarding address for the Tenant.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, 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 was paid, which is \$1,376.00.

Section 38(4) 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. Although the Tenant did agree on the condition inspection report that the Landlord could retain a portion of the security deposit for cleaning, I find that this does not serve as authorization to retain a portion of the security deposit pursuant to section 38(4) of the *Act*, as a precise amount was not specified.

As the Landlord agrees that the Tenant is entitled to a refund of the \$25.00 fee paid for a building access card, I find that this fee should be refunded to the Tenant.

Section 21 of the Residential Tenancy Regulation specifies that a condition inspection report is evidence of the state of the repair and condition of the rental unit on the date of the inspection unless the landlord or the tenant has a preponderance of evidence to the contrary. On the basis of the condition inspection report, I find that the rental unit required cleaning at the end of the tenancy. In my view the Tenant's testimony that it did not require cleaning is not sufficient to cause me to disregard his prior written acknowledgment that cleaning was required. I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the rental unit in reasonably clean condition and I find that the Tenant must compensate the Landlord for the \$100.80 paid to clean the rental unit.

On the basis of the undisputed evidence, I find that the lock to the rental unit was functioning properly when it was inspected by a technician in December of 2011. I find, however, that the Landlord submitted insufficient evidence to discount the Tenant's testimony that he was having intermittent problems with the lock. Given that the problem with the lock was allegedly intermittent, I find it possible the lock was not functioning properly when the Tenant attempted to enter the rental unit and that it was functioning properly when the technician examined the lock. Even if the lock was functioning properly, I find that the Tenant did not breach the *Act* when he reported a perceived problem with the rental unit. In reaching this conclusion, I was heavily influenced by the absence of any evidence that corroborates the Agent for the Landlord's testimony that the Tenant was impaired at the time of this incident or that refutes the Tenant's testimony that he was not impaired.

Section 7(2) of the *Act* requires landlords to do whatever is reasonable to mitigate their damage or loss whenever compensation is being claimed. In the event the Tenant had falsely reported a faulty lock, the Landlord could have mitigated any losses arising from this report by sending an agent for the Landlord to the rental unit, who could have provided access to the unit if the lock was functioning properly, in which case the

Landlord would not have incurred the expense of replacing the lock. I find that the Landlord is not entitled to compensation for replacing the lock.

I find that the Landlord's application has merit I find that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$150.80, which is comprised of \$100.80 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I find that the Tenant has established a monetary claim, in the amount of \$1,401.00, which is comprised of double the security deposit, in the amount of \$1,376.00, and a refund of the \$25.00 fee for a building access card. I find that this claim must be reduced by the \$105.60 that has already been returned to the Tenant, leaving a balance of \$1,295.40.

After offsetting the two monetary claims, I find that the Landlord owes the Tenant \$1,189.60 and I grant the Tenant a monetary Order for that amount. 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 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: January 08, 2013.

