



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee; and ii) by the tenant for a monetary order reflecting compensation for the double return of the security deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from September 1, 2011 to August 31, 2012. The agreement provides that at the end of the fixed term, tenancy may continue on a month-to-month basis.

Monthly rent of \$1,500.00 and hydro in the amount of \$100.00 were both due and payable in advance on the first day of each month. A security deposit of \$750.00 was collected. While the tenancy agreement names 2 tenants ("KLB" & "SJB"), the tenant applicant in this proceeding ("KLB") testified that he is the one who paid the security deposit. A move-in condition inspection report was not completed.

On or about July 31, 2012, tenant "SJB" put written notice to end the tenancy into the landlord's mail box. Subsequently, the tenants vacated the unit on August 31, 2012, at which time the tenants also provided the landlord with a forwarding address in writing.

The landlord claims that the unit required certain cleaning and painting, and that the carpet needed to be replaced at the end of the subject tenancy. A move-out condition inspection report was not completed.

New tenants took possession of the unit on September 1, 2012. Carpet in the unit was replaced during the early stages of the new tenancy. The landlord stated that the replaced carpet was in the unit at the time when the house was purchased approximately 10 years ago.

As the landlord declined to return the tenant's security deposit, the tenant filed an application for dispute resolution on October 29, 2012. Thereafter, the landlord filed an application for dispute resolution on December 28, 2012.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Based on the documentary evidence and testimony of the parties, the various aspects of the respective applications and my findings around each are set out below.

TENANT'S CLAIM:

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of 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 or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

In this case, I find that the landlord neither repaid the security deposit nor filed an application for dispute resolution within 15 days after the end of tenancy on August 31, 2012, which is also the date when a forwarding address was provided. Accordingly, I find that the tenant has established entitlement to compensation reflecting the double return of the security deposit in the total amount of **\$1,500.00** (2 x \$750.00).

In the result, I also find that the tenant is entitled to recover the **\$50.00** filing fee.

Total entitlement: \$1,550.00.

LANDLORD'S CLAIM:

\$100.00: *cleaning.*

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further to the above, section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**, and provides in part as follows:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

The landlord's evidence includes a receipt for costs incurred for cleaning in the amount of \$100.00 (5 hours x \$20.00 per hour). There is no documentary evidence in support of any particular cost that may have been incurred for painting, some of which the landlord testified was required after the end of this tenancy.

In consideration of what might be deemed "reasonably clean," and in the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the landlord's application must be dismissed.

\$425.00: *replacement carpet.*

Evidence submitted by the landlord includes a receipt in support of this specific cost for replacement carpet. There is no receipt to support any particular cost that may have been incurred for installation, or for removal of the discarded carpet.

Residential Tenancy Policy Guideline # 40 addresses the "Useful Life of Building Elements." As to carpets, the useful life in years is deemed to be 10.

In the absence of the comparative results of move-in and move-out condition inspection reports, and in view of the age of the carpet which I find to be in excess of 10 years, this aspect of the application must be dismissed.

\$50.00: *filing fee.* As the landlord has not succeeded with the principal aspects of the claim, the application to recover the filing fee is hereby dismissed.

Conclusion

The landlord's application is hereby dismissed in its entirety.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,550.00**. Should it be necessary, this order may be served on the landlord, filed in the 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 23, 2013

Residential Tenancy Branch

