



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of double their security deposit and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Tenant be awarded a Monetary Order?

Background and Evidence

The Tenant submitted 38 pages of documentary evidence which included, among other things, copies of: the tenancy agreement; the move in and move out condition inspection report forms; a letter written by the Landlord dated September 16, 2011; and a cheque written by the Landlord and dated 2011/09/16.

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the move in and move out condition inspection report forms; a letter written by the Landlord dated September 16, 2011; pages from a notepad with the Tenant's forwarding address and names of cleaning companies; her cheque # 020 issued to the Tenant 2011/09/16; photos; her written submission; and a hand written invoice / explanation of cleaning costs for \$291.00.

The following facts were confirmed during the course of this proceeding and were not in dispute:

- The Tenant occupied the rental unit since November 1, 2009 and entered into a subsequent fixed term tenancy agreement that began on September 1, 2010 and was set to end on August 31, 2011;
- Rent was payable on the first of each month in the amount of \$1045.00 and on or before November 1, 2009 the Tenant paid \$497.50 as the security deposit;
- Both parties attended the move in inspection on October 28, 2009 and the move out inspection on August 30, 2011, and each party signed the condition inspection report form;
- The Tenant provided the Landlord with his forwarding address on August 30, 2011;
- On September 16, 2011 the Landlord wrote the Tenant a letter and mailed him a cheque in the amount of \$118.30 deducting \$385.00 from the security deposit of \$497.50 and allocated interest of \$5.80. The deductions were comprised of \$270.00 for cleaning costs, \$20.00 for damages, and \$95.00 for possessions taken by the Tenant;
- The Tenant has not cashed the cheque.

The Tenant initially testified that he did not have a discussion about cleaning with the Landlord. Then he stated that during the inspection the Landlord was unsatisfied with the level of cleaning. She moved a couch and noticed that he had not cleaned underneath it and she became upset. He confirmed that he did not move the couch because he was told at the onset of the tenancy not to move furniture around as it would scratch the laminate floor. He recalls having a discussion about the cleaning and that it was to be no more than \$50.00.

Upon review of the move out inspection form the Tenant argued that he had signed a blank form and the form he received in the mail with the cheque had the words "not cleaned" written on it in several places. He did not agree, in writing, for her to make the deductions or to keep any portion of his deposit.

The Landlord testified that she did not add anything to the move out inspection after the Tenant signed the form. She stated all the comments were written before he signed it. When she began to point out items that were not clean the Tenant protested her comments and became upset. After she pointed out to him that there were several areas that needed cleaning; such as the balcony, in suite storage, all kitchen cupboards, the bathroom, and all the floors she told him that he could clean them or she could hire a cleaner to do it for him and deduct the cost from his security deposit. He questioned her if it would take all of his deposit and she told him that she did not think so. He left after agreeing for her to hire a cleaner. At no time did she tell the Tenant not to move furniture to clean.

The cleaning was done on September 1, 2013, which included costs for washing all the linens and drapes which she did not charge the Tenant for. On September 16, 2011 she mailed the Tenant copies of the receipt, her explanation for deductions and the deposit refund cheque. She acknowledged that she deducted the extra charges for damages and her possessions without the Tenant's prior permission, which she now realizes was in breach of the Act; but she had his permission to deduct cleaning costs.

In closing, the Tenant pointed out that the Landlord did not send him the move out inspection form and refund cheque within the required fifteen days, as set out in the Act.

I informed the Tenant that the refund cheque he was still holding was now stale dated and I instructed him to shred that cheque.

Analysis

All of the testimony and documentary evidence was carefully considered.

I find that in order to justify payment of loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss; in this case the Tenant bears the burden of proof.

I favor the evidence of the Landlord, who stated that they had verbally agreed that she would hire a cleaner and deduct the cost of cleaning from his security deposit, as supported by the invoice provided from the cleaner of \$291.00. I favored the Landlord's evidence over the evidence of the Tenant who initially stated there was no agreement for a deduction for cleaning and later changed his testimony to say they had discussed cleaning charges up to \$50.00. I favored the evidence of the Landlord, in part, because her evidence was forthright and credible. The Landlord readily acknowledged that she deducted additional amounts from the security deposit without prior permission from the Tenant and acknowledged that this was in breach of the Act. In my view the Landlord's willingness to admit fault, when she could easily have stated they the Tenant agreed to all of the deductions, lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the

preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Tenant's explanation that the Landlord added the words "not clean" to the move out inspection report to be improbable given the condition of the unit, as supported by the photos. I find that the Tenant's explanation that he agreed to a charge of not more than \$50.00 for cleaning an entire rental unit in that condition to be improbable. Rather, I find the Landlord's explanation that the parties had entered into an agreement that the Landlord would have the cleaning done and deduct the costs off of the security deposit to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find the parties agreed to have the cleaning costs deducted off of the security deposit and interest leaving a balance of the security deposit held in trust in the amount of **\$227.50** (\$497.50 + \$0.00 interest – \$270.00 cleaning). Although the Landlord invested the security deposit in an account that earned interest; there was no interest accrued based on the requirements of the Act.

The Landlord acknowledged that she did not apply for dispute resolution to keep the security deposit of \$227.50; she does not have an Order allowing her to keep the additional \$115.00 (\$95.00 + \$20.00), and she does not have the Tenant's consent to retain \$115.00 of the security deposit.

The evidence supports that the tenancy ended August 30, 2011 and the Tenant provided the Landlord with his forwarding address on August 30, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit of \$227.50 in full or file for dispute resolution no later than September 14, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing, I find that the Tenant has succeeded in proving his claim and I award him double the return of his security deposit plus interest in the amount of **\$445.00** (2 x \$227.50 + \$0.00 interest).

I find that the Tenant has succeeded with his application therefore I award recovery of the **\$50.00** filing fee.

The Tenant was instructed to shred the Landlord's cheque # 020 that was issued 2011/09/16.

Conclusion

The Tenant has been issued a Monetary Order in the amount of **\$495.00** (\$445.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not 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: May 14, 2013

Residential Tenancy Branch

