



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 the Landlord's 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.

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 acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the entitled to compensation for cleaning the rental unit; to retain all or part of the security deposit paid by the Tenant; and 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 was a fixed term tenancy that began on September 01, 2012 and ended on February 28, 2013; that rent was paid for the entire term of the tenancy; that the rental unit was vacated on January 30, 2013; that the keys to the rental unit were returned on, or about, January 30, 2013; that the Tenant provided the Landlord with a forwarding address, via email, on, or about, February 01, 2013; that the Tenant paid a security deposit of \$625.00; and that the Landlord returned \$320.00 of the deposit on March 14, 2013.

The Landlord and the Tenant agree that a condition inspection report was not completed at the beginning of the tenancy and that the Landlord did not schedule a time/date to complete that report.

The Landlord and the Tenant agree that a condition inspection report was not completed at the end of the tenancy and that the Landlord did not schedule a time/date to complete that report, although he did send an email on February 28, 2013, in which he asked the Tenant to come to the rental unit.

The Landlord is seeking compensation, in the amount of \$255.00, for cleaning the rental unit. The Landlord submitted several photographs of the rental unit which he stated were taken on February 02, 2013, after the keys had been returned by the Tenant. The Tenant stated that some of the photographs fairly represent the condition of the rental unit at the end of the tenancy, specifically some of the cupboards which still contained property belong to the Tenant. The Tenant stated that he does not know if the photographs of the oven and the area behind the refrigerator fairly represent the condition of the rental unit at the end of the tenancy, as he did not clean or inspect those areas at the end of the tenancy. He stated that he did not clean the oven because he only used it on one occasion to heat pizza. The Tenant stated that he does not believe the photographs of the shower and toilet fairly represent the condition of the rental unit at the end of the tenancy, as he spent a couple of hours cleaning the unit at the end of the tenancy and he "can't recall" the shower or toilet being that dirty.

The Landlord stated that he spent 8.5 hours cleaning the rental unit. The Tenant stated that the entire rental unit could be cleaned in approximately 2 hours.

Analysis

On the basis of the testimony of the Landlord and the photographs submitted in evidence, I find that the photographs submitted in evidence by the Landlord fairly represent the condition of the rental unit at the end of the tenancy. In reaching this conclusion, I was influenced by the Tenant's admission that some of the photographs do accurately reflect the condition of some areas in the rental unit. This corroborates the testimony of the Landlord.

In determining this matter I was further influenced by the Tenant's testimony that he did not inspect the oven or behind the refrigerator at the end of the tenancy. In the absence of evidence that refutes the Landlord's testimony that the photographs accurately reflect these areas, I accept his testimony in this regard. I find that this portion of the Tenant's testimony corroborates the Landlord's claim that the rental unit was not thoroughly cleaned at the end of the tenancy.

In determining this matter I was further influenced by the nature of the testimony provided by both parties. When describing the condition of the rental unit the Landlord was confident that the photographs accurately reflected the condition of the rental unit.

Conversely, the Tenant was less certain in his testimony. He never categorically denied that the photographs reflected the condition of the rental unit and could only state that he did not recall some areas being that dirty.

In the absence of concrete evidence that shows the photographs submitted in evidence by the Landlord do not accurately reflect the condition of the rental unit at the end of the tenancy, I find that they are an accurate representation of the condition of the unit. On the basis of those photographs, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the rental unit in reasonably clean condition at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for the time he spent cleaning the rental unit as a result of the Tenant failing to comply with the *Act*.

On the basis of the photographs submitted in evidence, I accept the Landlord's testimony that it took him approximately 8.5 hours to clean the rental unit and I find he is entitled to his claim of \$255.00, which equates to an hourly wage of \$30.00, which I find to be a reasonable hourly wage.

Section 23(1) of the *Act* stipulates that the landlord and the tenant must jointly inspect the rental unit at the start of the tenancy. Section 23(3) of the *Act* stipulates that the landlord must offer the tenant at least two opportunities, as prescribed, for the inspection. Section 23(6) of the *Act* stipulates that the landlord must make the inspection and complete the report without the tenant if the landlord has complied with section 23(3) and that tenant has not participated on either occasion. On the basis of the undisputed evidence, I find that the Landlord did not comply with section 23(3) or 23(6) of the *Act*.

Section 24(2)(a) of the *Act* stipulates that the right of a landlord to claim against a security deposit for damage to the residential property is extinguished if the landlord does not comply with section 23(3) of the *Act*.

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. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 23(3) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit 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.

As the Landlord has not yet returned the full security deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), 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 double the security deposit to the Tenant.

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

Conclusion

The Landlord has established a monetary claim, in the amount of \$305.00, which is comprised of \$255.00 for cleaning and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$305.00 from double the security deposit that is owed to the Tenant, in full satisfaction of this monetary claim.

After deducting the \$305.00 monetary claim and the \$320.00 of the security deposit that has already been returned to the Tenant from the double security deposit that must be returned to the Tenant, I find that the Landlord must pay the Tenant another \$625.00. Based on these determinations I grant the Tenant a monetary Order for the amount \$625.00. 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: June 03, 2013

Residential Tenancy Branch

