



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss 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 Landlord entitled to compensation for damage to the rental unit and/or is the Tenant entitled to the return of double his security deposit and/or pet damage deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2012; that the Tenant paid a security deposit of \$700.00; and that the Tenant paid a pet damage deposit of \$700.00. The parties agree that the fixed term of this tenancy ended on March 31, 2013 and that the rental unit was vacated on March 30, 2013. The Tenant submitted a copy of an email, dated January 21, 2013, in which the Tenant provided notice of his intent to end the tenancy on March 31, 2013.

The Landlord and the Tenant agree that a condition inspection report was completed at the beginning and the end of this tenancy, a copy of which was submitted in evidence. The Tenant stated that when he received a copy of the condition inspection report that was completed on March 30, 2013, he noted that several entries had been added to the report after he had signed it. He specifically noted that any references to the blinds not closing properly and the carpets being dirty were added after he signed the report.

The Landlord and the Tenant agree that the Landlord received a forwarding address for the Tenant, in writing, on March 30, 2013.

The Landlord is seeking compensation, in the amount of \$200.71, for replacing a blind. The Agent for the Landlord stated that one of the cords in the blind was damaged which made it impossible for the blinds to be properly opened or closed. The condition inspection report that was completed on March 30, 2013 by the Landlord and this Tenant notes that the blinds do not close properly. The Agent for the Landlord stated that the blinds were approximately five years old. The Tenant stated that he believes all of the blinds were working properly at the end of the tenancy.

The Landlord submitted a copy of a condition inspection report that was completed when a new tenant moved into the rental unit on March 30, 2013, in which it was noted that the blind did not close properly.

The Landlord is seeking compensation, in the amount of \$157.50, for cleaning the carpet in the rental unit. The Agent for the Landlord stated that the carpet needed cleaning at the end of the tenancy, although it has not yet been cleaned by the Landlord. The condition inspection report that was completed on March 30, 2013 by the Landlord and this Tenant notes that the carpets required cleaning.

The Tenant stated that he cleaned the carpet with a rented carpet cleaner at the end of the tenancy and that they did not require further cleaning.

There is no mention of the carpet being dirty on the condition inspection report that was completed when a new tenant moved into the rental unit on March 30, 2013.

The Landlord and the Tenant agree that the Landlord has returned the pet damage deposit and the security deposit, in full. The Tenant stated that he received a refund cheque, in the amount of \$1,400.00, on April 19, 2013.

The Agent for the Landlord stated that he spoke with the owner of the rental unit on April 15, 2013, who informed him that he mailed the refund to the Tenant on that day. The Landlord submitted no evidence to show the refund was mailed on April 15, 2013.

The Tenant submitted a copy of the envelope in which he received his refund, which was postmarked April 17, 2013.

The Landlord and the Tenant agree that on April 22, 2013 the Tenant mailed a copy of the condition inspection report to the Tenant. The Tenant submitted a copy of the envelope in which he received the report, which was postmarked April 23, 2013. The Tenant contends that this demonstrates an envelope that is placed in the mail box is generally processed and date stamped the following day.

The Agent for the Landlord stated that he spoke with a representative from Canada Post, who informed him that it could take up to two days to process and date stamp a piece of mail and that mail is date stamped on the day of delivery. The Landlord submitted no evidence to corroborate this claim, although he did submit Canada Post documentation that shows mail is generally delivered within 2 business days within a city.

Analysis

On the basis of the undisputed testimony and the email from the Tenant, dated January 21, 2013, I find this tenancy ended on March 31, 2013 and that the rental unit was vacated on March 30, 2013.

After hearing the statements of both parties regarding the condition of the blind, I find that the blind did not close properly at the end of the tenancy. In reaching this conclusion I was heavily influenced by the condition inspection report that was completed when a third party moved into the rental unit at the end of this tenancy, which indicates the blind did not close properly. I find the report corroborates the Landlord's testimony in this regard. In reaching this conclusion, I did not conclude that the Tenant was being untruthful in this regard, as it is entirely possible that he simply did not know the blind did not function properly.

Section 37 of the *Residential Tenancy Act (Act)* does not require tenants to repair damage that is due to reasonable wear and tear. It is my understanding that cords on blinds became tangled and/or damaged due to regular use. As these blinds were five years old and there is no evidence the blinds were misused by the Tenant, I find it reasonable to conclude that the damage to the blinds was the result of reasonable wear and tear. I therefore dismiss the Landlord's claim for repairing the blind.

After hearing the statements of both parties regarding the condition of the carpet at the end of the tenancy, I find that the carpets did not require cleaning. In reaching this

conclusion I was heavily influenced by the condition inspection report that was completed when a third party moved into the rental unit at the end of this tenancy, which does not mention that the carpets were in need of cleaning. I find the report corroborates the Tenant's testimony in this regard. As the Landlord has failed to establish that the carpets needed cleaning, I dismiss the Landlord's claim for cleaning the carpet.

In reaching the conclusion regarding damages, I have placed no weight on the condition inspection report that was completed by the Landlord and this Tenant on March 30, 2013, as the Tenant alleges the references to the damaged blind and dirty carpets were added after the Tenant signed the report. Although no evidence was submitted that corroborates this testimony or that refutes the Agent for the Landlord's testimony that the report was not altered, I find that the allegation is plausible. I specifically note that I have not found that the condition inspection was altered. I find that the possibility exists, however, and that the report should not, therefore, be given any weight.

In determining that the condition inspection report that was completed by the Landlord and this Tenant on March 30, 2013 should not be given any weight, I was further influenced by the discrepancy between this report and the report that the Landlord and the incoming tenant completed on March 30, 2013. The fact that the report that the Landlord and the incoming tenant completed does not indicate the carpets were dirty causes me to question the veracity of the information on the report that was completed by the Landlord and this Tenant on March 30, 2013.

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. As this tenancy officially ended on March 31, 2013 and the Landlord received a forwarding address for the Tenant, in writing, on March 30, 2013, I find that the Landlord was obligated to return the security deposit/pet damage deposit by April 15, 2013. When deposits are refunded by mail, I find that a landlord has complied with the spirit of the legislation as long as the refunds are mailed within the 15 day time period, regardless of the date it is delivered by Canada Post.

I find that the Landlord submitted insufficient evidence to show that the security/damage deposit was mailed by April 15, 2013. In reaching this conclusion I placed limited weight on the Agent for the Landlord's testimony that the refund was placed in the mail on April 15, 2013, as he was not present when the refund was mailed. While I accept that he was told by the owner of the unit that he mailed the cheque on April 15, 2013, I find that his testimony is subject to all of the frailties of hearsay evidence.

I specifically note that the person who mailed the refund did not attend the hearing or provide documentary evidence to confirm that he placed it in a Canada Post mail box on April 15, 2013.

I find, on the balance of probabilities, that the refund was mailed on April 16, 2013. In reaching this conclusion I was heavily influenced by the envelope that was submitted in evidence, which is postmarked April 17, 2013.

In determining that the refund was mailed on April 16, 2013, I placed significant weight on the envelope that was submitted in evidence that was postmarked April 23, 2013. The evidence shows that this envelope was mailed on April 22, 2013 and was postmarked the next day. This causes me to conclude that the envelope post marked April 17, 2013 was likely mailed the previous day, which is April 16, 2013.

In determining that the refund was mailed on April 16, 2013, I placed little weight on the Agent for the Landlord's testimony that a representative of Canada Post informed him that it could take up to two days to process and date stamp a piece of mail. The Landlord submitted no evidence to corroborate this testimony and it is, again, subject to the frailties of hearsay evidence.

In determining that the refund was mailed on April 16, 2013, I was influenced, in part, by the Canada Post document which indicates that regular letters are generally delivered within two business days within a city. I find this delivery standard inconsistent with the Agent for the Landlord's submission that it could take two days to date stamp a letter. It is my understanding that a letter is postmarked when it is processed by Canada Post, which is before it is sent out for delivery. If, as the Landlord contends, it could take up to two days to date stamp a letter, it would be highly unlikely that the two day delivery standard within a city could be met by Canada Post on a regular basis.

I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not mail the deposits within the 15 day time period. 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 and pet damage deposit.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the fee for filing an Application for Dispute Resolution.

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

Conclusion

The Tenant has established a monetary claim, in the amount of \$2,850.00, which represents double the security/pet damage deposit plus the filing fee. This claim must be reduced by the \$1,400.00 that has already been returned to the Tenant.

Based on these determinations I grant the Tenant a monetary Order for the amount \$1,450.00. 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: July 17, 2013

Residential Tenancy Branch