



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bakonyi Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / retention of all or part of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 1, 2002. A security deposit of \$267.50 was collected on April 20, 2002. By letter dated March 31, 2013, the tenant gave notice to end tenancy effective April 30, 2013.

The tenant acknowledged that he had neither completely vacated the unit by 1:00 p.m. on April 30, 2013, nor finished cleaning. Evidence submitted by the landlord includes photographs taken within the unit after the tenant vacated. In addition to showing what appears to be various wear and tear, the photographs show a stained / dirty sink, a stained / dirty toilet and certain other areas in the unit which appear not to have been thoroughly vacuumed or otherwise cleaned. Additionally, the landlord testified that as the unit keys had not been left behind in the unit, he undertook to change the locks.

By letter dated May 15, 2013, the tenant informed the landlord of his forwarding address and requested the return of his security deposit. Subsequently, on May 29, 2013 the landlord filed an application for dispute resolution in which he seeks to retain the tenant's security deposit and recover the filing fee. A move-out condition inspection report was not completed, and there is no evidence that the landlord provided the tenant

with at least 2 opportunities to complete the inspection. Further, the landlord has submitted no receipts in support of his application.

Pursuant to section 63 of the Act which speaks to the **Opportunity to settle dispute**, the parties explored a possible settlement during the hearing. However, ultimately their discussion did not lead to a mutually agreeable resolution.

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

Below, the attention of the parties is drawn to particular sections of the Act, the Regulation and the Guidelines.

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**

Section 38: **Return of security deposit and pet damage deposit**

The Regulation:

Part 3 – **Condition Inspections** (sections 14 to 21)

Further, section 37 of the Act speaks to **Leaving the rental unit at the end of a tenancy**:

37(1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(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

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Finally, Residential Tenancy Policy Guideline # 1 addresses “Landlord & Tenant – Responsibility for Residential Premises.”

Based on the documentary evidence and testimony, in summary, I find that the right of the landlord to claim against the tenant's security deposit is extinguished. In this regard, section 36(2) of the Act specifically provides as follows:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35(2) *[2 opportunities for inspection]*,
- (b) having complied with section 35(2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Following from all the above, the landlord's application is hereby dismissed, and I find that the tenant has established entitlement to the full return of his security deposit of \$267.50 plus interest of \$9.48 [total: **\$276.98**].

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$276.98**. 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: September 04, 2013

Residential Tenancy Branch

