



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Domus Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain a portion of the tenant's security deposit and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on June 10, 2013. The landlord supplied the receipt of the registered mail showing the tracking number and stated that it was sent to the forwarding address provided by the tenant on the condition inspection report..

I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the portion of the tenant's security deposit not returned to the tenant and to recover the filing fee?

Background and Evidence

The landlord provided evidence that this tenancy began on April 15, 2006, ended on June 5, 2013, and that the tenant paid a security deposit of \$812.50 at the beginning of the tenancy.

The landlord's monetary claim is \$390, comprised of a broken refrigerator shelf for \$30, damage to the kitchen floor for \$180, damage to the wall for \$40, suite cleaning for \$60, blinds cleaning for \$30, and the filing fee of \$50.

The landlord's relevant documentary evidence included copies of photographs of the rental unit, an invoice for a kitchen floor which was installed during the tenancy and a condition inspection report.

The landlord stated that \$500.21 of the tenant's security deposit has been returned to the tenant and that they are requesting to keep the balance of \$312.29 for damages and cleaning to the rental unit.

The landlord submitted that it was necessary to repair some wall damage and damage to the linoleum caused by the tenant during the tenancy. As well, the landlord submitted that it was necessary to clean the rental unit after the tenancy ended.

In support of their claim, the landlord referred to the photographic evidence and the invoice from 2010 for the kitchen floor replacement.

The condition inspection report shows that the tenant did not agree to any deductions from the security deposit and refused to sign the report agreeing to deductions.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the

claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 37(2) of the Act requires that, at the end of a tenancy, a tenant leave the rental unit reasonably clean, and undamaged taking into account that the tenant is entitled to reasonable wear and tear.

In reviewing the landlord's photographic evidence, I find the tenant met their obligation under the Act as I was unconvinced by the landlord's evidence that the condition of the rental unit at the end of the tenancy was anything other than as a result of normal wear and tear. I also find that a reasonable person would find the rental unit to have been left at least reasonably clean, especially in light of the fact the tenancy exceeded 7 years.

I find that had the tenant failed to leave the rental unit reasonably clean, the landlord likely would have incurred much more than \$90 for cleaning.

As to alleged damage, I was unable to determine from the landlord's photographic evidence that the kitchen floor was damaged or that there was simply a mark; further the alleged damage to the wall appeared from my viewing to be reasonable wear and tear.

I also considered that the landlord failed to supply any evidence showing a loss, such as with a receipt, invoice, or time records. Therefore I find that the landlord failed to meet step 3 of their burden of proof.

Due to the above, I find the landlord submitted insufficient evidence that the tenant has violated the Act or the tenancy agreement or that the landlord suffered a financial loss for cleaning and repairs for alleged damage and I therefore dismiss their application.

As I have dismissed the landlord's application, I also dismiss their request to recover the filing fee.

Conclusion

The landlord's application is dismissed.

As I have dismissed the landlord's application claiming against the tenant's security deposit, I order the landlord return to the tenant the remaining balance of their security deposit and interest in the amount of \$339.86 (\$312.29 retained from the security deposit of \$812.50 plus interest of \$27.57).

As I have ordered the landlord to return the tenant's security deposit and interest, I also grant the tenant a monetary order pursuant to section 67 of the Act for the amount of \$339.86, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement may be recovered from the landlord.

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* and is being mailed to both the applicant and the respondent.

Dated: September 16, 2013

Residential Tenancy Branch

