



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant requested return of double the security deposit, as compensation for damage or loss and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting compensation for damage to a carpet, to retain the security deposit and to recover the filing fee from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of an evidence package that had been supplied by the tenant. That evidence package was not before me; however, the tenant indicated that she could provide testimony in relation to those documents.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the landlord entitled to compensation in the sum of \$683.97 for damage to the carpet?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 1, 2012; a security deposit in the sum of \$375.00 was paid.

The tenancy ended on April 30, 2013 at which time a move-out condition inspection report was completed and the tenant's written forwarding address was provided. The tenant agreed that she signed the inspection report, agreeing that some damage had occurred to the carpet. There was no dispute that several red stains were left on the bedroom carpet. The inspection report was altered after the inspection was completed; a notation was added indicating that the carpet quote was attached.

The condition inspection report did not indicate a specific amount that could be deducted from the deposit and no agreement was reached between the parties. On May 28, 2013 the landlord submitted an application for dispute resolution claiming against the security deposit.

A May 3, 2013 quote from a well known carpet company indicated a cost of \$683.97 to replace 150 square feet of carpet. A copy of the quote was provided as evidence.

On May 28, 2013 the tenant's counsel sent the landlord a letter, without prejudice, suggesting the deposit must be doubled and that the tenant would agree to settle the matter if the original amount of the deposit, \$375.00, was returned.

The landlord stated that the carpet was 3 years old; the tenant believes the carpet was approximately 5 years old. The tenant said that the carpet had other small stains and that she did not believe she should pay the cost of providing the landlord with new carpet for the whole room.

Several photographs of the carpet supplied as evidence showed red marks left along a wall; this was not in dispute. The carpet showed dark areas that the landlord said appeared to be the result of poor lighting. There were other smaller stains, which the tenant said were present at the start of the tenancy. The move-in inspection report did not indicate any stains at the start of the tenancy.

During the hearing the tenant stated that a reasonable estimate of the damage she caused to the carpet would be \$340.00.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit

paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The tenant signed the inspection report, acknowledging damage to the carpet, but no specific amount of deduction from the security deposit was agreed upon. The landlord did obtain an estimate of the cost to replace the whole carpet, but failed to return the deposit or submit a claim against the deposit within fifteen days of April 30, 2013.

Therefore, in the absence of agreement for a specific deduction to be made from the security deposit and in the absence of claim against the deposit within fifteen days of April 30, 2013, I find, pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the \$375.00 deposit.

The amount of deposit owed to a tenant is contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute in relation to damage caused to the bedroom carpet. The tenant acknowledges the damage; the question is the level of cost the tenant must assume for that damage and whether the damage was the result of normal wear and tear.

Residential Tenancy Branch policy suggests that the life-span of carpet in a rental unit is 10 years. From the evidence before me I find that the likely age of this carpet is in the range of 4 years. If I were to find that the tenant was responsible for damage caused, to the extent that the whole carpet should be replaced, she would be responsible for \$410.38 of the total estimated repair cost. Taking into account normal wear and tear during the time the unit was previously occupied, I find that this is a reasonable sum.

I find that the red stains were not the result of what would be considered normal wear and tear. Red stains of this sort are not the result of daily use but of some sort of negligence; although in this case, unintentional.

Therefore, I find that the landlord is entitled to compensation in the sum of \$410.38 for carpet repair in recognition of the approximate 6 years of use that could have remained and that the balance of the claim is dismissed.

The amount owed to the tenant is set off against the sum owed to the landlord.

As both claims have merit I decline filing fee costs to either.

Based on these determinations I grant the tenant a monetary Order for the balance owed in the sum of \$339.62. 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.

Conclusion

The tenant is entitled to return of double the \$375.00 security deposit; less \$410.38 owed to the landlord.

The balance of the landlord's claim is dismissed.

Filing fees are declined.

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

