



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD and FF

Introduction

This hearing was convened in response to cross applications.

On August 21, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; to retain the security deposit; and to recover the filing fee from the Tenant for the cost of filing this application.

On July 16, 2013 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; for the return of the security deposit; and to recover the filing fee from the Landlord for the cost of filing this application.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to reply upon as evidence were sent to the Tenant, via registered mail, on August 21, 2013. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and one page entitled "Details of Dispute cont'd" were sent to the Landlord, via registered mail, on July 17, 2013. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Tenant stated that he mailed additional documents to the Landlord, via regular mail, on October 15, 2013. The Agent for the Landlord stated that these documents were not received. As the Landlord does not acknowledge receipt of the documents and the Tenant has no evidence to corroborate the testimony regarding this service, I do not accept these documents as evidence for these proceedings.

The Agent for the Landlord stated that additional documents were mailed to the Tenant to the Landlord, via regular mail, on October 15, 2013. The Tenant stated that these documents were not received. As the Tenant does not acknowledge receipt of the

documents and the Landlord has no evidence to corroborate the testimony regarding this service, I do not accept these new documents as evidence for these proceedings.

Only the documents served with the Landlord's Application for Dispute Resolution and the Tenant's Application for Dispute Resolution, as agreed upon at the hearing, were considered when determining this matter.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the carpet and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2011; that the Tenant paid a security deposit of \$500.00; that the tenancy ended on June 30, 2013; that the Tenant did not authorize the Landlord to retain any portion of the security deposit, in writing; and that the Tenant provided the Landlord with a forwarding, in writing, on June 30, 2013.

The Landlord stated that \$200.00 of the security deposit was returned to the Tenant, via electronic transfer, on July 14, 2013; that the electronic transfer was never completed; and that the date for collecting this payment has expired and the Tenant no longer has the ability to collect this payment. The Tenant stated that he did not receive this electronic transfer, as it was sent to an incorrect email address.

The Landlord is seeking compensation for cleaning the carpet. The Landlord stated that the carpet was not properly cleaned at the end of the tenancy; that when she discussed the condition of the carpet at the end of the tenancy with the Tenant he agreed that the attempts to clean the carpet were not perfect; and that the Landlord had the carpets professionally cleaned on July 10, 2013.

The Tenant stated that the carpets were cleaned on June 29, 2013 with a carpet cleaner owned by his partner; that he was not 100% satisfied with the cleaning; that you could still tell where the furniture had been during his tenancy; and that the carpets were not spotless when he moved in, although they had been professionally cleaned.

The Landlord submitted an email from the current occupant of the rental unit, in which the author stated that their feet were black from walking on the carpets; that they could tell where the previous tenant's furniture had been; and that since the carpets were cleaned their feet no longer are soiled by the carpet. The Tenant acknowledged receipt of this email.

The Landlord submitted a receipt that shows \$350.70 was paid to clean the carpet. The Tenant acknowledged receipt of this document.

Analysis

Section 38(1) of the *Residential Tenancy Act (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. On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord did not repay the full security deposit and the Landlord did not file an Application for Dispute Resolution until August 21, 2013, which is more than 15 days after the tenancy ended and the date the landlord receives the Tenant's forwarding address in writing.

In determining this matter I placed no weight on the fact that the Landlord attempted to return \$200.00 of the security deposit on July 14, 2013. I would still conclude that the Landlord had failed to comply with section 38(1) of the *Act* even if this payment had been received, as this was only a partial refund and the Landlord did not have authorization to retain the remainder of the deposit.

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 the Tenant double the security deposit that was paid.

On the basis of the testimony of the Tenant, who acknowledged he could still see where his furniture had been located after he cleaned the carpet, and the email from the current occupant of the rental unit, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to leave the carpet in reasonably clean condition. In my view the current occupant's declaration that their feet were no longer being soiled by the carpet after it was professionally cleaned is a clear indication that the carpet was not adequately cleaned by the Tenant. I therefore find that the Landlord is entitled to recover the \$350.70 paid to clean the carpet.

I find that the Application for Dispute Resolution that was filed by the Landlord has merit and that the Application for Dispute Resolution that was filed by the Tenant also has merit. I therefore find that each party is responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim of \$1,000.00, which is double the security deposit. The Landlord has established a monetary claim of \$350.70 for cleaning the carpet. After offsetting the two claims, I find that the Landlord owes the Tenant \$649.30 and I grant the Tenant a monetary Order in that amount. In the event that the Landlord

does not voluntarily comply with this Order, it may be 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: October 22, 2013

Residential Tenancy Branch

