



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELOWNA SUITES LTD.
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the tenant for a monetary order for compensation for damage and loss under the Act for cleaning costs and the remaining security deposit of \$45.00 not yet refunded by the landlord.

The total amount of the damages and deposit being claimed is \$450.00 including \$25.00 for the cost of the registered mail. The tenants were also seeking the \$50.00 fee paid by the tenant for this application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

- Is the tenant entitled to the return of the remaining security deposit pursuant to section 38 of the Act?
- Is the tenant entitled to monetary compensation pursuant to *section 7* and *section 67* of the Act?

Background and Evidence

The tenancy began on July 1, 2012 and ended on June 30, 2013. Rent was \$715.00 and a security deposit of \$357.50 was paid.

The tenant testified that the landlord only repaid \$312.50 of the security deposit and kept \$45.00 for the cost of the carpet cleaning. The tenant testified that she had cleaned

the carpets prior to moving out and the move-out condition inspection report confirms that the carpets were clean. The tenant testified that never gave the landlord written permission to retain any portion of the security deposit.

The tenant was seeking to receive a monetary order for the return of the remaining security deposit retained by the landlord.

The landlord testified that it is a requirement under the tenancy agreement, signed by the parties, that the carpets be professionally cleaned prior to vacating the unit. The landlord acknowledged that the move-out condition inspection report does show the carpets as being in a clean condition. The landlord also acknowledged that the tenant did not give written permission for the landlord to make any deductions from the tenant's security deposit.

The landlord stated that, because of the tenant's failure to comply with the tenancy agreement term requiring them to *professionally* clean the carpets the landlord felt justified in charging the tenant half the normal cost of professional cleaning and deducting \$45.00 from the deposit.

The landlord explained that they did not have the opportunity to make an application to retain the amount the security deposit as the tenant refused to provide a forwarding address.

The landlord testified that the \$45.00 retained from the deposit was given to the new renters in compensation for the fact that the carpets were not professionally cleaned. The landlord also pointed out that a specific term in the tenancy agreement permits the landlord to retain all or part of the security deposit for steam cleaning the carpets.

With respect to the tenant's claim of \$180.00 for "*move-in and move-out*" rug cleaning, the tenant stated that, although she signed the move-in condition inspection report verifying that the carpets were clean, she had only taken the landlord's word that they were clean. The tenant testified that she chose to clean the carpets herself anyway once she took occupancy and found that they were actually soiled.

In regard to the carpet cleaning done by the tenant at the end of the tenancy, the tenant is also claiming reimbursement for her labour for this move-out carpet cleaning as well.

The tenant seeks compensation of \$200.00 for the move-in cleaning, which represents 8 hours labour at \$25.00 per hour. The tenant testified that, although she did sign the move-in condition inspection report agreeing that the unit was clean, she later discovered that there were serious cleaning issues that were not obvious at first glance, once she pulled out the appliances and did a closer examination.

The landlord disputed the tenant's claim for compensation for the cleaning and pointed out that the move-in condition inspection report proves that both parties had agreed that the unit was reasonably clean upon moving in. The landlord testified that there was never any agreement to compensate the tenant for additional cleaning.

Analysis

Security Deposit Claim by Tenant

Section 38 of the Act states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address, a landlord must either refund the deposit, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

With respect to the return of the tenant's security deposit, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing at the end of the tenancy. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit.

I do not accept the landlord's argument that the landlord is allowed to retained any portion of the security deposit based on an agreed-upon term contained in the tenancy agreement. I find that this is contrary to section 20 (e) of the Act, which states that a landlord must not *"require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement"*

Moreover, section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and provides that any attempt to avoid or contract out of this Act or the regulations is of no effect.

However, a landlord may be able to keep the deposit to satisfy a liability or obligation of the tenant if, after the end of the tenancy, the landlord makes an application for dispute resolution to obtain a monetary order to retain part of the deposit to compensate the landlord for proven losses caused by the tenant.

I find that the landlord retained a portion of the tenant's security deposit held in trust on behalf of the tenant and did not make an application to retain the deposit or portion thereof. That being said, I find that the landlord was never provided with a written forwarding address by the tenant and therefore could not possibly have made an application seeking to retain the security deposit for damages.

In any case, I find that the remaining security deposit of \$45.00 must be refunded to the tenant, as the Act does not permit the landlord to retain it without first obtaining written permission from the tenant or a monetary order.

Claim for Damages and Compensation

With respect to the tenant's claims for compensation for cleaning the carpets and general cleaning of the rental unit, I find that section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant took reasonable steps to address the situation and to mitigate the damage or losses that were incurred

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by

a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Given the move-in and move out condition inspection reports confirm that both parties agreed that the rental unit and carpets were reasonably clean when the tenant moved in and moved out, I find that the tenant did not provide sufficient evidence to show that the landlord was in violation of the Act with respect to the cleanliness of the carpets nor the cleanliness of the rental unit.

I therefore find that the tenant's claim for compensation has failed to satisfy element 1 of the test for damages and must be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to total monetary compensation of \$95.00, comprised of \$45.00 for the portion of the security deposit wrongfully retained and the \$50.00 fee paid by the tenant to file this application.

I hereby grant a monetary order in the amount of \$95.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary. The remainder of the tenant's application is dismissed without leave.

Conclusion

The tenant is partially successful in the application and is awarded a refund of the remaining security deposit and the tenant's claim for damages is dismissed.

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 16, 2013

Residential Tenancy Branch

