



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Advantage Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

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

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issue regarding service of the evidence.

Thereafter both parties gave affirmed testimony, were provided the opportunity to present their 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 tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on May 1, 2011, monthly rent was \$1450, and that the tenant paid a security deposit of \$725 on April 19, 2011.

The landlord said that the tenancy ended on June 30, 2013; however, the tenant submitted that the tenancy ended on June 27, 2013. I note that the final inspection was conducted on June 27, 2013, as noted in the condition inspection report.

The landlord's monetary claim is in the amount of \$2289.93, comprised of \$495 for suite cleaning, \$80 for painting preparation, \$89 for carpet cleaning, and \$1625.93 for repairs to the rental unit. The claim for repairs is broken down into the following: \$100 for a counter repair, \$187.62 for toilets and repairs, \$147.32 for blinds repair, \$68.71 for a dryer knob, and \$1122.28 for carpet replacement.

On the condition inspection report, the tenant agreed that the landlord could deduct the amount of \$250, comprised of \$75 for carpet cleaning, \$25 for light bulbs, and \$150 for the burn to the carpet. The condition inspection report shows that the landlord owed the tenant the balance of the security deposit \$475. This amount has not been returned to the tenant. The condition inspection report also provided the written forwarding address of the tenant.

In support of their application, the landlord provided the following testimony:

- The damage to the carpet was not as pronounced at the inspection as it was following the inspection due to the poor lighting, and the landlord believed the carpet could be fixed; instead the carpet was required to be replaced.
- Upon a later inspection by the landlord after the bulbs were replaced, it was determined that a further cleaning was required.
- The paint was prepared for repainting as the owner wanted to repaint the rental unit anyway.
- There were chips in the granite countertop, which was noted on the condition inspection report.
- The landlord did not notice the broken blind at the move-out inspection, as the blinds were pulled up at the time.
- The dryer was missing a knob, which had to be replaced.

The tenant provided the following testimony in response to the landlord's application-

- The tenant denied that there was poor lighting at the final inspection as there was plenty of light and the parties were not rushed in making the inspection.
- The tenant denied the carpet needed to be replaced as the burn spot was very small and could be repaired, which is why he agreed to the deduction on the condition inspection report.
- The tenant denied the suite needed cleaning, as his girlfriend, mother and two sisters assisted in cleaning. The tenant submitted that the rental unit was spotless as they spent a lot of time cleaning. The tenant went on to contend that if one agrees to the charges for repair or cleaning on the condition inspection report, that should be the end of it.
- The tenant pointed out that no paint damage was mentioned on the condition inspection report.
- The tenant stated that there were chips in the granite countertop when the tenancy began.
- The tenant denied breaking the blinds.
- The tenant agreed to the dryer knob charge.

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 21 of the Residential Tenancy Regulation states that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In the case before me, I find the landlord failed to submit sufficient evidence which would overcome the presumption that the condition inspection report accurately recorded the condition of the rental unit as agreed upon by both parties.

In reaching this conclusion, the landlord failed to convince me that the rental unit was too dark to sufficiently notice what they are now claiming was further damage. The landlord said that the inspection took place in the late afternoon; however, on June 27, I find that there is sufficient daylight in combination with the lighting in the home. I was provided no photographs from the date of the inspection, which would depict the lighting of the rental unit on that day.

As to the condition inspection report, the carpet damage was noted, and the tenant agreed to pay a reasonable amount. Chips in the kitchen were noted on the move-in inspection, but not on the move-out inspection. The only cleaning mentioned on the move-out inspection report was a second bedroom; however no specific details were provided and it was not mentioned as a deduction agreed to by the parties on the condition inspection report.

As to the blinds, the landlord did not notate a broken blind on the condition inspection report and the tenant denied breaking the blinds.

In considering all the evidence, I find that the condition inspection report was conclusive proof of the state of the rental unit at the end of the tenancy, and I dismiss the landlord's monetary claim for costs for further damage repair and cleaning which was not noted on the condition inspection report.

I decline to award the landlord recovery of the filing fee of \$50, as I have dismissed the landlord's monetary claim for further repairs and cleaning.

I allow the landlord to retain from the tenant's security deposit the amount of \$318.71, comprised of \$250 as agreed to by the tenant on the condition inspection report and a dryer knob replacement of \$68.71, as agreed upon by the tenant in the hearing.

I order the landlord to return the balance of the tenant's security deposit of \$406.29 to the tenant forthwith.

Conclusion

The landlord's application for further monetary compensation, with the exception of a dryer knob is dismissed.

The landlord is allowed to retain \$318.71 from the tenant's security deposit and is ordered to return the balance of \$406.29 to the tenant.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$406.29, 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 are recoverable 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: October 25, 2013

Residential Tenancy Branch

