



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Equitex Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

The landlord's agent (hereafter "landlord") and the tenant 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, no party raised any issue regarding service of the evidence or the landlord's application.

Thereafter both parties 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 authority to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

I heard undisputed evidence from the parties that this tenancy began on July 1, 2012, that monthly rent during the tenancy was \$850, and that the tenant paid a security deposit of \$425 and a pet damage deposit of \$425 at the beginning of the tenancy. The move out inspection occurred on June 27, 2013.

The landlord in the hearing modified their monetary claim listed in their application for dispute resolution, from \$1000, to half of \$925.58, less the second carpet cleaning of \$124.27. In explanation \$925.58 was the cost of carpet replacement.

The parties inspected the rental unit at the conclusion of the tenancy, and as shown by the condition inspection report, the tenant agreed to a deduction of \$315 from his security deposit and pet damage deposit. The amount of \$300 was due to pet damage, in order to clean the carpet to rid it of dog odour. An additional fee of \$15 was charged for a key replacement.

The landlord submitted that the dog odour became much more evident after the inspection, and that as the smell could not be eliminated, the owner had to replace the carpet. The landlord claims that the tenant is responsible for paying one half of the carpet replacement, due of the irreparable damage caused by the tenant's dog, as the carpet was 5 years old.

The landlord has not returned any portion of the tenant's security deposit or pet damage deposit.

The landlord's relevant documentary evidence included a carpet replacement invoice, an email from the subsequent tenant, a carpet cleaning invoice and a copy of the condition inspection report.

In response, the tenant submitted that he was under the assumption that the amount he agreed that the landlord could deduct from his two deposits, \$315, covered all damage to the carpet, including replacement if necessary.

The tenant submitted additionally that when he moved into the rental unit, there was a dog odour already present in the carpet, and that he knew the previous tenant had a dog as he saw a dog when he viewed the rental unit prior to moving in.

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.

As to the landlord's claim that the tenant is responsible for carpet replacement, I find the landlord submitted insufficient evidence that they are entitled to compensation from the tenant.

In reaching this conclusion, I was influenced by the fact that the rental unit previously had dogs living there, leading me to conclude that there was a very strong possibility that dog or pet odour was lying in the carpet at the beginning of the tenancy, as stated by the tenant. I am not convinced that if the pet odour was that strong, it would not be noticed at the move-out inspection attended by the parties.

I was also heavily influenced by the date of the carpet installation, which occurred on or about September 12, 2013, almost 3 months after the tenancy ended, well after a new tenancy had begun. I would have been less likely to be influenced had the carpet been installed right after the end of the tenancy and not after a new tenant had been living in the rental unit more than 2 months.

I am not willing to award the landlord compensation for damage which could have been made by the next tenant.

I allow the landlord to retain the amount of \$315 from the tenant's security deposit and pet damage deposit, which total \$850, as agreed upon by the parties at the end of the tenancy, and I dismiss the remainder of the landlord's monetary claim for the reasons stated above.

As I have dismissed the landlord's monetary claim, except for authority to retain \$315 from the tenant's security deposit and pet damage deposit, I also decline to award them recovery of their filing fee.

I therefore direct the landlord to return the balance of the tenant's security deposit and pet damage deposit in the amount of \$535 (\$850 total less \$315).

Conclusion

The landlord's application for further monetary compensation is dismissed and I have ordered them to return the balance of the tenant's security deposit and pet damage deposit in the amount of \$535.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$535, 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 subject to recovery 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 18, 2013

Residential Tenancy Branch

