



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, SS

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to retain a portion of the security deposit – Section 38;
2. An Order for alternate service; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath. The Landlord withdraws the claim for alternate service.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2011 and ended on July 31, 2013 although the Tenant did not move out all belongings until sometime into August 2013 but prior to the move out inspection that was mutually conducted on August 12, 2013. At the onset of the tenancy the Landlord collected \$845.00 as a security deposit and \$400.00 as a pet deposit. The Parties mutually conducted a move-in inspection on July 20, 2011. The Landlord returned \$699.00 of the security deposit to the Tenant.

The Landlord states that the Tenant left the unit unclean and damaged and claims as follows:

- \$160.00 for cleaning, painting and repairing the unit. The Landlord states that the Tenant left unclean windows, tracks, oven hood, baseboards and walls. The Tenant states that the unit was cleaned to beyond a reasonable state, that it was done by a professional cleaner but that the items claimed by the Landlord were overlooked and minor. The Landlord states that the costs claimed include the Landlord's labour to paint a kitchen wall and spots in two other rooms that the Tenant had patched. The Landlord was unable to state what time was allocated to the cleaning. The Tenant states that prior to move-out the Tenant asked for paint to cover the patches and that the Landlord told the Tenant that there was no paint on hand and that the Landlord would take care of it. The Landlord states that this conversation took place prior to seeing the patches left on the kitchen wall. The Tenant states that there were no damages noted on the move-out inspection;
- \$196.00 for the cost of cleaning the carpet. The Landlord states that although the Tenant had the carpets steam cleaned they were not done with a professional machine and that areas of the carpet were left stained. The Landlord provided a black and white photocopy of a photo of the carpet being cleaned. The Tenant states that the carpet was white and that it was left reasonably clean. The Tenant states that the area of high traffic was left a slightly darker shade but that this discoloration is to be expected with a white carpet. The Landlord states that the carpet was 5 years old, light colored and that the areas with darker shades were where the dog slept. The Tenant states that the photo does not show the carpet where the dog slept prior to being cleaned by the Landlord;
- \$80.00 for the cost of the Landlord to attend the unit while the carpet was cleaned. The Landlord states that his time to attend the unit was included in the

tenancy agreement addendum. The Tenant states that part of the Landlord's obligation is to take care of minor wear and tear;

- \$25.00 for the replacement of a visitor's pass that the Landlord states was charged by the Strata. No receipt for this cost was provided. The Parties agree that the Tenants signed an agreement to pay the fee of \$25.00 to replace a pass however the Tenant states that with the Landlord's permission a duplicate pass was recreated by the Tenant for no charge
- \$35.00 for the cost of serving documents by registered mail.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Accepting that the Landlord told the Tenant that the Landlord would take care of the patches on the walls after the Tenant asked for paint to cover the patches, I find that the Landlord accepted the state of the walls as left by the Tenant. While the Tenant does agree that there were some items left unclean but considering that the Landlord did not provide any evidence as to the allocation of the costs claimed for the cleaning of the unit, I find that I am unable to determine that the Landlord has substantiated the costs claimed even for remaining cleaning and I therefore dismiss this claim.

As the Tenant agreed that the carpet was left a different shade after the Tenant's cleaning of the carpet and considering the relative young age of the carpet, I find that the Tenant failed to leave the carpet reasonably clean and that the Landlord has substantiated the costs to clean the carpet in the amount of **\$196.00**. Although the Landlord relies on the tenancy agreement to claim costs for his time to attend the unit

while the carpets were being cleaned, I find that the tenancy agreement contemplates work or labour undertaken by the Landlord. As I consider a Landlord's time in attending a unit a usual duty of the Landlord over a course of a tenancy, and considering that the Landlord did not undertake any work while attending the unit, I find that the Landlord has not substantiated costs to attend the unit and I dismiss this claim.

Considering the Tenant's evidence that a duplicate pass was made by the Tenant and given that the Landlord provided no bill or invoice for the cost to replace this duplicate, I find that the Landlord has failed to substantiate the cost claimed to replace the visitor's pass and I dismiss this claim.

As the Act only provides for reimbursement of the filing fee and not for any other costs of the dispute process, including registered mail costs, I dismiss this claim of the Landlord.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$246.00**. AS the Landlord has returned \$699.00 of the combined security and pet deposit of \$1,245.00 plus zero interest, I find that the Landlord still retains **\$546.00**. I order the Landlord to deduct the entitlement from this amount and return the remaining **\$300.00** to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$246.00 from the security deposit plus interest of \$1,245.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$300.00**. If necessary, this order may be filed in the 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: November 25, 2013

Residential Tenancy Branch

