



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF

For the landlord: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The tenant applied for a return of his security deposit and for recovery of the filing fee.

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

At the outset of the hearing, neither party raised any issue about service of their respective applications or the documentary evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant oral and written evidence before me which met the requirements of the Dispute Resolution Rules of Procedure (Rules); however I refer to only the evidence relevant to the issues and findings in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a return of his security deposit and to recover the filing fee?
2. 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 is that this tenancy began on April 1, 2013, ended on August 31, 2013, monthly rent was \$700 and the tenant paid a security deposit of \$350 at the beginning of the tenancy on April 28, 2013.

Tenant's application-

The tenant's agent (hereafter "tenant") gave evidence that the landlord was provided the tenant's written forwarding address on September 7, 2013, via registered mail. The tenant stated that the landlord has sent mail at the new address since the end of the tenancy.

The tenant's relevant documentary evidence included a copy of the letter sent to the landlord requesting a return of his security deposit and providing a forwarding address.

The landlord acknowledged receiving the tenant's written forwarding address by September 12, 2013. The landlord stated that she sent the tenant a cheque in the amount of \$202.65 in partial refund, and as the cheque was never cashed, she put a stop payment on the cheque.

Landlord's application-

The landlord's monetary claim totals \$317.06, comprised of cleaning of the suite for \$150, damage to a door for \$75, a filing fee of \$50, a registered mail fee of \$12.06, and removal of a tonneau cover to a storage location.

The landlord's relevant documentary evidence included copies of photographs of the rental unit, which are believed to be taken at the end of the tenancy, a letter, dated September 12, 2013, written to the tenant explaining why the landlord was making a deduction of \$150 from the tenant's security deposit, a move out checklist, a landlord-tenant checklist, page 6 of a 6 page written tenancy agreement, an addendum to the tenancy agreement, a copy of a text message from the tenant suggesting that his cleaning person did not clean as promised, and an emailed quote for repairing a door.

I note that the tenant check list was not in the form of a condition inspection report as required by the Residential Tenancy Regulation #20 and not signed or dated by either party.

In support of her application, the landlord testified that when she went by to check on the rental unit before the new tenants moved in, she discovered that the rental unit was not clean; the landlord submitted that she and her husband then cleaned the rental unit from 3:15 until 6:00 p.m. as the tenant failed to vacuum, sweep, wipe down anything, or remove all his belongings. The landlord contended that she is entitled to \$150 for cleaning, which is \$30 per hour for person for her and her husband.

The landlord submitted anticipated that there would be no cleaning needed before her new tenants moved in.

The landlord said that the tenant caused damage to one of the entrance doors, which was new at the beginning of the tenancy.

In response, the tenant's agent denied that the tenant damaged the rental unit or left it unclean. The tenant's agent said that the dent in the door was there at the beginning of the tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Tenant's application-

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit has been extinguished, a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy, whichever is later. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of his security deposit has been extinguished as I find that the landlord failed to provide a condition inspection report compliant with the Act and Regulations, extinguishing the landlord's right to make a claim against the tenant's security deposit for damage to the rental unit.

In the case before me, the undisputed evidence shows that the tenancy ended on August 31, 2013, and the landlord received the tenant's written forwarding address by September 12, 2013; therefore the landlord had until September 27, 2013, to return the

tenant's security deposit in full or file an application for dispute resolution claiming against the security deposit. Instead the landlord chose to make a deduction from the tenant's security deposit prior to returning a portion and did not file her application for dispute resolution until October 7, 2013.

I therefore grant the tenant's application for dispute resolution and order that the landlord pay the tenant double his security deposit, as the tenant did not specifically waive his right to receive double.

I find that the tenant is entitled to a monetary award in the amount of \$750, comprised of his security deposit of \$350, doubled to \$700, and for recovery of the filing fee of \$50 due to the tenant's successful application.

Landlord's application-

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.

Under section 23 of the Act, a landlord is required to conduct an inspection of the premises and complete a condition inspection report in compliance with the Residential Tenancy Branch Regulation, in this case, section 20 listing the standard information which must be included.

In reviewing the document the landlord supplied, a landlord-tenant checklist, I find this document to be non-compliant with section 20, as to form and content and therefore deficient. As this document was deficient in that it did not accurately depict the state of the rental unit at the beginning of the tenancy or was signed or dated, I could not rely on this report to confirm the state of the rental unit either before and after the tenancy ended.

There is also no independent record of the condition of the rental unit at the start of the tenancy such as photos of a like position and angle as in the copies of photos supplied by the landlord depicting the state of the rental unit at the end of the tenancy.

I also could not rely on the partial text message of the tenant supplied by the landlord, as the landlord failed to supply the entire message or the messages of the landlord before and following the tenant's text message.

Additionally Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. I therefore find the landlord's expectation that the tenant have the rental unit ready for the next tenant to be unreasonable and not required under the *Act*. Based upon that standard of the landlord, I find that the tenant left the rental unit reasonably clean.

I therefore dismiss the landlord's claim for \$150.

As to the allegedly damaged door, I find the landlord submitted insufficient evidence that the tenant damaged the door, due to a lack of a condition inspection report noting the state of the door at the beginning of the tenancy. Additionally as the landlord has not paid to have the door repaired or supplied a receipt for removal of a tonneau cover, I find the landlord has submitted no evidence of a loss and I dismiss her claim for \$75 and \$30.

As to the landlord's claim for registered mail expenses for the provision of notice of this hearing to the tenant, the *Act* does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee and I dismiss her claim for \$12.06.

As the landlord has not been successful with her application, I dismiss her request for recovery of the filing fee.

Due to the above, I dismiss the landlord's application, without leave to reapply.

Conclusion

The tenant's application has been granted and I have awarded him monetary compensation in the amount of \$750, comprised of his security deposit of \$350, doubled to \$700, and recovery of the filing fee of \$50.

I therefore grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$750, 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.

The landlord's application for monetary compensation 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* and is being mailed to both applicants.

Dated: November 12, 2013

Residential Tenancy Branch

