



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 money owed or compensation for alleged damage to the rental unit, for authority to retain the tenant's security deposit, and for recovery of the filing fee.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that she served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 21, 2013. The landlord supplied the registered mail receipt showing the tracking number of the registered mail.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89 of the Residential Tenancy Act (the "Act") and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her 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 and to recover the filing fee?

Background and Evidence

The tenancy agreement supplied by the landlord shows that the tenancy began on November 1, 2012, monthly rent was \$900, and the tenant paid a security deposit of \$450.

The landlord stated that the tenancy ended on July 31, 2013. The landlord confirmed that there was not a move-in condition inspection report and there was no evidence of an inspection of the rental unit prior to the tenant moving into the rental unit.

The landlord's relevant additional documentary evidence included some photographs taken before and after the tenancy, copies of email communication between the parties, a receipt from a home improvement store, an estimate from a paving company, which references to removal and replacement of a portion of the concrete driveway, an unsigned, undated letter, entitled "Invoice" for cleaning the rental unit, and an invoice from a building contractor showing work on the rental unit through November 2012, the first month of the tenancy.

In support of her application, the landlord testified that the amount of damage by the tenant during the tenancy was in excess of the tenant's security deposit, and therefore she sought to retain the security deposit for that damage.

The landlord submitted that the tenant failed to clean the rental unit prior to vacating and that she hired someone to clean the rental unit.

The landlord submitted that the tenant's car leaked oil in the driveway and that she intended to have the concrete replaced.

The landlord also testified that she did not have a move-in condition inspection as the rental unit has just renovated by the start of the tenancy.

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 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 party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

A key component in establishing a claim for damage or cleaning is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports.

In the case before me, the landlord confirmed there was no condition inspection report from the beginning of the tenancy, nor did the landlord contend that she inspected the rental unit with the tenant prior to her moving in. I therefore could not determine whether any alleged damage or repair by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repair at all by the tenant as there were no condition inspection report to compare. I also find that the photographic evidence of the state of the rental unit supplied by the landlord was inconclusive as the photographs were undated and were not in the same position or angle before and after.

I must also note that the landlord's photographs showing smoke marks above the heaters failed to convince me that the marks were there from misuse by the tenant, and there was no allegation that it was.

I also considered that the landlord claimed damage and repairs above the amount of the security deposit; yet the only evidence submitted by the landlord was an undated, unsigned receipt for \$150, which I found unconvincing, and a receipt from a home improvement store for \$158.59.

As to the oil stain on the driveway, I am not convinced that the tenant's car left the oil mark as I did not have a photograph of the spot before the tenancy. The appearance of the driveway is esthetic in nature, but the driveway is still usable and I find this along with an estimate for repairs, has not caused a loss to the landlord.

Due to the lack of an condition inspection report taken at the beginning of the tenancy, or any other convincing evidence to prove that the tenant damaged the rental unit or left the rental unit less than reasonably cleaned as required by section 37 of the Act, I find the landlord submitted insufficient evidence to support her claim to retain the tenant's security deposit, without leave to reapply.

I likewise decline to award her recovery of her filing fee.

As I have dismissed the landlord's application seeking to retain the tenant's security deposit, I order that the landlord return the tenant's security deposit, in the amount of \$450.

Pursuant to section 67 of the Act, I award the tenant a monetary order in the amount of \$450, which I have enclosed with the tenant's Decision.

Conclusion

The landlord's application to retain the tenant's security deposit is dismissed and the landlord has been ordered to return the security deposit of \$450.

The tenant is granted a monetary order for the amount of \$450, the amount of her security deposit.

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: December 13, 2013

Residential Tenancy Branch

