



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kekinow Native Housing Society
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 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's agent (hereafter "landlord") attended the telephone conference call hearing; the tenant did not attend.

The landlord testified and supplied documentary evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on August 26, 2013. The landlord supplied the 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, further monetary compensation, and to recover the filing fee?

Background and Evidence

The landlord supplied evidence that this tenancy began on November 15, 2009, ended on April 30, 2013, and the tenant paid a security deposit of \$500 at the beginning of the tenancy.

The landlord's monetary claim is \$970, comprised of carpet cleaning for \$195, suite cleaning for \$300, painting for \$425, and the filing fee of \$50.

The landlord's relevant documentary evidence included a contractor's quote for repair, three pages of small unclear and indistinct copies of photographs of the rental unit, and a move-out condition inspection report.

The landlord testified that the tenant damaged the rental unit which required that the landlord make repairs, especially to the walls. The landlord also submitted that the tenant failed to clean the carpet and that the rental unit required cleaning.

In response to my question, the landlord stated that she believed a move-in condition inspection was conducted at the beginning of the tenancy and that a report was prepared; however the landlord stated she was not present at the beginning of the tenancy. I note that a move-in condition inspection report was not provided by the landlord.

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.

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 is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord failed to provide a move-in condition inspection report and therefore I could not determine that the landlord complied with their requirement under of the Act of completing the inspection, resulting in extinguishment of the landlord's right to make a claim against the tenant's security deposit, pursuant to section 36(2) of the Act. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any evidence, such as the move-in condition inspection report or photographs prior to the tenancy, I do not accept the landlord's claim for damages to the rental unit as there is no proof that any alleged damage was beyond reasonable wear and tear.

Additionally the landlord failed to submit evidence that they sustained a loss due to the actions of the tenant, as they failed to provide receipts or other proofs of payments, which is step 3 of their burden of proof.

I therefore find the landlord has submitted insufficient evidence to prove their claim for \$970 for damages and cleaning and I dismiss their application, without leave to reapply.

As I have dismissed the landlord's application claiming against the tenant's security deposit which is held in trust for the tenant during the tenancy, I order that the landlord return the tenant's security deposit of \$500. As I have ordered that the landlord return the tenant's security deposit, I grant the tenant a monetary order in the amount of \$500.

Conclusion

The landlord's application for monetary compensation is dismissed.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her security deposit of \$500, 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: December 06, 2013

Residential Tenancy Branch

