



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

On November 13, 2013 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage and to recover the fee for filing this Application for Dispute Resolution.

On December 19, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of her security deposit and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Agent for the Landlord stated that the Landlord's Application for Dispute Resolution was served to the Tenant, via registered mail, although he does not know the date of service. The Tenant stated that she believes she received the Landlord's Application for Dispute Resolution on November 18, 2013.

The Landlord submitted documents the Landlord wishes to rely upon as evidence to the Residential Tenancy Branch on January 17, 2014. The Agent for the Landlord stated that copies of these documents were served to the Tenant, by mail, on January 13, 2014. The Tenant stated that she received these documents on January 17, 2014 and they were accepted as evidence for these proceedings.

The Tenant stated that the Tenant's Application for Dispute Resolution and Notice of Hearing was served to the Landlord, via registered mail, on December 20, 2013. She stated that it was returned to her by Canada Post on January 10, 2014. The Agent for the Landlord stated that the Landlord's mailing address was changing during this time.

The Landlord was given the opportunity to request an adjournment to provide the Landlord with the opportunity to consider and respond to the Tenant's Application for Dispute Resolution. The Agent for the Landlord declined the opportunity to request an adjournment as he believes he is able to adequately respond to the Tenant's claim at the hearing.

The Landlord had previously submitted a written request for an adjournment as the Agent for the Landlord was required to attend court on an unrelated matter at 10:00 a.m. on this date. At the outset of the hearing the Agent for the Landlord stated that he believed he had time to participate in this hearing and still attend court for the unrelated matter. He withdrew his application for an adjournment.

Issue(s) to be Decided

Is the Landlord entitled to compensation for a damaged carpet and is the Tenant entitled to a refund of her security deposit?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on February 01, 2011; that the Tenant agreed to pay monthly rent of \$1,400.00; and that the Tenant paid a security deposit of \$700.00.

The Tenant stated that she also paid a pet damage deposit of \$700.00 in two installments. The Agent for the Landlord stated that he understands a pet damage deposit was paid in installments, although he does not know the amount that was paid.

The Landlord and the Tenant agree that this tenancy ended on October 31, 2013; that the Tenant provided the Landlord with a forwarding address, in writing, on November 01, 2013; that the Tenant did not give the Landlord written permission to keep a portion of the deposits; and that the Landlord did not return any portion of those deposits.

The Landlord is seeking compensation, in the amount of \$3,250.00, for replacing the carpet in the rental unit. The Agent for the Landlord stated that the carpets were in good condition at the start of the tenancy; that the carpet was stained and in need of cleaning at the end of the tenancy; that the Landlord cleaned the carpets on November 30, 2013; that the carpets were still stained after they were cleaned; that the carpets were at least ten years old at the end of the tenancy; that the Landlord decided to replace the carpets.

The Tenant stated that the carpets had been professionally cleaned prior to the start of her tenancy; that the carpets were old and not in pristine condition at the start of the tenancy; that the carpets were dirty at the end of the tenancy; and that she did not clean the carpets at the end of the tenancy because the Agent for the Landlord informed her that the Landlord was considering replacing the carpet.

The Landlord submitted two photographs of the carpet in the rental unit, which show that the carpets were stained. The Agent for the Landlord stated that these photographs prior to the carpets being cleaned after the end of this tenancy. The Landlord did not submit any photographs of the condition of the carpet after they were cleaned on November 30, 2013.

The Landlord submitted a condition inspection report. There is a notation on the top of the report which declares that the rental unit was left in "good condition except for carpet on main floor. Not cleaned by tenant waiting on decision of landlord to clean or remove".

Analysis

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$700.00. In the absence of evidence to the contrary, I find that the Tenant paid a pet damage deposit of \$700.00. In reaching this conclusion I was heavily influenced by the Tenant's testimony that a pet damage deposit of \$700.00 was paid and by the Agent for the Landlord's testimony that he understands a pet damage deposit was paid, although he does not know the amount.

On the basis of the undisputed evidence I find that this tenancy ended on October 31, 2013; that the Landlord did not return any portion of the security deposit/pet damage deposit; and that the Tenant did not authorize the Landlord to retain any portion of the deposits.

Section 38(1) of the *Residential Tenancy Act (Act)* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not repaid any portion of the deposits and the Landlord did not file an Application for Dispute Resolution in which the Landlord applied to retain the security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit/pet damage deposit.

On the basis of the undisputed evidence, I find that the carpet required cleaning at the end of this tenancy. As the Landlord has not claimed compensation for cleaning the carpet, I make no award in that regard.

I find that the Landlord submitted insufficient evidence to establish that the carpet was so damaged during the tenancy that it needed to be replaced. In reaching this conclusion I was heavily influenced by the absence of evidence to show the condition of

the carpets after they were cleaned on November 30, 2013. In my view, the Agent for the Landlord's testimony that the carpets were still stained after they were cleaned on November 30, 2013 is not sufficient to conclude that the carpets needed to be replaced. I find that this is particularly true when the Landlord could easily have submitted photographs to support the claim that the carpets needed replacing after they were cleaned.

In concluding that the Landlord has failed to establish that these carpets needed replacing because they were damaged during the tenancy, I was influenced, in part, by the Agent for the Landlord's testimony that the carpet was at least ten years old. The Residential Tenancy Policy Guidelines show that the life expectancy of carpets is ten years and I find it entirely possible that the Landlord opted to replace the carpet because it had exceeded its life expectancy, in part because of stains resulting from "normal wear and tear".

As the Landlord has failed to establish that the carpet needed replacing because it was damaged by the Tenant, beyond normal wear and tear, and I dismiss the Landlord's claim for replacing the carpet.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing her Application. I find that the Landlord's Application for Dispute Resolution has been without merit and I dismiss the Landlord's application to recover the fee for filing an Application.

Conclusion

The Tenant has established a monetary claim, in the amount of \$2,850.00, which is comprised of double the security/pet damage deposit and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: March 03, 2014

Residential Tenancy Branch

