



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, MND, and FF

Introduction:

This hearing was convened in response to cross applications.

On December 23, 2013 the Tenant filed an Application for Dispute Resolution, in which the Tenant applied for the return of the security deposit, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing an Application for Dispute Resolution.

The Tenant stated that on December 23, 2013 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Tenant wishes to rely upon as evidence were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On February 21, 2014 the Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, a monetary Order for damage to the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on February 21, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

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 to me.

On March 28, 2014 a receipt for carpet cleaning, in the amount of \$100.00, was submitted to the Residential Tenancy Branch, which the Tenant stated he submitted. The Tenant stated that on March 28, 2014 this receipt was sent to the Landlord, via registered mail. The Agent for the Landlord stated that this document was not received by the Landlord and it was therefore not accepted as evidence. Prior to excluding this

receipt I noted that it does not appear to be relevant to any of the claims in dispute at this hearing and I therefore do not find that the Tenant is placed at a disadvantage by excluding this document.

Issue(s) to be Decided:

Is the Tenant entitled to the return of the security deposit and is the Landlord entitled to compensation for a plugged toilet?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began on December 01, 2012 and that the Tenant paid a security deposit of \$900.00. The parties agree that the tenancy ended on November 30, 2013 and that the Agent for the Landlord received the Tenant's forwarding address, via text message, on November 30, 2013.

The Landlord and the Tenant agree that the Tenant did not authorize the Landlord to retain any portion of the security deposit and that the Landlord returned a portion of the security deposit, in the amount of \$620.00. The parties agree that the security deposit refund was mailed to the Tenant, at the forwarding address provided by the Tenant, sometime in December of 2013.

The Agent for the Landlord stated that the rental unit was rented to a third party for December 15, 2013, although the third party was permitted to move property into the rental unit sometime prior to that date. In the Application for Dispute Resolution the Landlord declared that the Tenant moved into the rental unit on December 14, 2013.

The Agent for the Landlord stated that on December 10, 2013 or December 15, 2013 the new occupant of the rental unit reported that the toilet was not working properly. In the Application for Dispute Resolution the Landlord declared that the toilet was plugged on December 15, 2013.

The Agent for the Landlord stated that on December 30, 2013 or December 31, 2013 a plumber dismantled the toilet and removed a pair of blue underwear from the toilet. The Landlord submitted a receipt to show that the Landlord paid \$100.00 to unclog a toilet.

The Landlord submitted a photograph of an item in a garbage can, which the Agent for the Landlord stated was the item removed from the toilet.

The Tenant stated that he did not have problems with the toilet during his tenancy; that he did not place any cloth item in the toilet; and he does not recognize the cloth item that was removed from the toilet.

Analysis:

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 or make an application for dispute resolution claiming against the deposit.

On the basis of the undisputed evidence, I find that the Landlord failed to comply with section 38(1) of the *Act*, as the Landlord has not yet repaid the full security deposit and he did not file an Application for Dispute Resolution seeking to retain the deposit until February 21, 2014. To comply with section 38(1) of the *Act* the Landlord would have either had to repay the deposit in full or file an Application for Dispute Resolution by December 15, 2013, as the tenancy ended on November 30, 2013 and the Landlord received the Tenant's forwarding address on November 30, 2013.

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.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee for filing an Application for Dispute Resolution.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the cloth item found in the toilet was placed in the toilet by the Tenant. In reaching this conclusion I was heavily influenced by the absence of any evidence that refutes the Tenant's testimony that he does not recognize the cloth item that was removed from the toilet and that he has never disposed of any cloth item in the toilet.

While I find it possible that the cloth item was placed in the toilet by the Tenant or a guest of the Tenant, I find it equally possible that the item was placed in the toilet by the new occupant. As the problem with the toilet was reported after the new occupant had been in the rental unit for at least one day, I find it is entirely possible that the new occupant is the person who clogged the toilet.

As the Landlord has submitted insufficient evidence to establish that the Tenant plugged the toilet, I dismiss the Landlord's claim for the cost of repairing this problem. As the Landlord has failed to establish the merit of the Landlord's Application for Dispute Resolution, I dismiss the Landlord's application to recover the fee for filing an Application.

Conclusion:

The Tenant has established a monetary claim of \$1,850.00, which is comprised of double the security deposit and \$50.00 as compensation for the cost of filing this Application for Dispute Resolution. This claim must be reduced by the \$620.00 that was refunded to the Tenant after the tenancy ended.

On the basis of these calculations I grant the Tenant a monetary Order for \$1,230.00. In the event that the Landlord does not voluntarily 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: April 10, 2014

Residential Tenancy Branch

