



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Maude, MacKay & Co. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit.

The landlord and tenant attended the teleconference hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Although the landlord had not submitted their documentary evidence in the time required under the Dispute Resolution Rules of Procedure (Rules) with their application or when it became available, the tenant confirmed receiving the evidence, did not request an adjournment, and did not raise an issue regarding the late service of the evidence.

Thereafter both parties were provided the opportunity to present their 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 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?

Background and Evidence

The undisputed evidence was that this tenancy began on March 1, 2011, ended on March 31, 2014, monthly rent was \$2400, and the tenant paid a security deposit of \$1200 at the beginning of the tenancy. The landlord has retained the security deposit, having made an application claiming against the security deposit.

The landlord's monetary claim is \$1200, for carpet cleaning, replacement of closet shelving and repair for nail holes, and repair of damage to the fireplace hearth.

The landlord's relevant documentary evidence included, but was not limited to, the written tenancy agreement, a move-in and move-out condition inspection report, a carpet cleaning receipt, a receipt from a marble/tile company for repair to the hearth, black and white copies of photographs of the fireplace, and a receipt from a construction company.

Prior to the landlord's submissions in support of their application, the tenant agreed to the costs of carpet cleaning. The tenant submitted that he did not have the carpets cleaned as he was informed that there was a possibility that the owners were renovating the rental unit after this tenancy, and that the carpet would be replaced.

The hearing proceeded on the landlord's claim for fireplace damage and alleged closet and nail hole damage.

In support of their application, the landlord submitted that that the shelving in the closet had to be reinstalled, at a cost of \$90, and that nail holes and chips in the walls required repairing. The landlord referenced the receipt from the construction company, showing these expenses.

The landlord confirmed that the tenant was provided no instructions on wall hangings.

In response, the tenant submitted that the shelving unit was in the closet, and as he needed to store brooms there, he lifted the shelf off of the brackets and placed them to the side. The tenant submitted further that when he knew this may be an issue with the landlord, he sent an email offering to go back in and put the shelf back on, for just a minute or two of time. The tenant explained that he had moved next door.

The tenant submitted that he did not know what chips in the wall to which the landlord referred and that the walls were in good shape.

As to the fireplace damage, the landlord submitted that the hearth was damaged and stained, and that the original installation company repaired the damage as much as possible without having a full replacement. The repair included sanding and re-sealing, with the result that the stains were lessened, but not removed.

In response, the tenant submitted that when burning a pressed wood fire log in the fireplace, the log broke down and embers fell on the hearth. As he was standing there at the time of occurrence, he quickly swept the embers off the hearth into the fireplace with his hands, according to the tenant.

The tenant submitted further that when he saw the landlord's receipt, he spoke with the original installation company, and was informed that the hearth was a porous concrete and easily stained.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Carpet cleaning-

The tenant agreed to this charge, and I therefore approve the landlord's monetary claim of \$205.75.

Shelving installation and wall repair-

Residential Tenancy Branch Policy Guideline 1 allows a landlord to provide instructions to tenants for hanging and removing pictures or other wall hangings and if these instructions are followed, a nail hole is not considered damage.

In this case the landlord provided no such instructions and provided no evidence that the tenant negligently or intentionally damaged the walls. Additionally, I saw no mention made of wall damage on the move-out condition inspection report.

As to the reinstallation of the shelving in the closet, I find the landlord failed to mitigate their loss, due to their refusal of the tenant's offer to put the shelf back on the brackets. I

also do not find a charge of \$90, if that was the case as the receipt failed to break down the costs, to be reasonable for such a minor procedure.

Due to the above, I find the landlord submitted insufficient evidence to prove their claim for shelving installation and wall repair, and it is therefore dismissed.

Fireplace damage-

I find the landlord submitted insufficient evidence that the tenant was negligent or did not use the fireplace for its intended purpose of burning logs. I find it reasonable to conclude that embers would fall out of a fireplace when being used and that the resulting staining in this case was reasonable wear and tear.

I therefore find the landlord failed to prove that the tenant violated the Act, the tenancy agreement or the Residential Tenancy Regulations with his use of the fireplace, and I dismiss their claim for fireplace damage.

Due to the above, I find the landlord is entitled to a total monetary award of \$205.75 for fireplace damage.

Conclusion

The landlord's application for monetary compensation is granted in part.

I direct the landlord to retain \$205.75 from the tenant's security deposit of \$1200 in satisfaction of their monetary award.

As I have dismissed the balance of the landlord's claim, I direct that they return the balance of the tenant's security deposit in the amount of \$994.25 forthwith. In the event the landlord's fail to return the balance of the tenant's security deposit of \$994.25, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act in that amount, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be served upon the landlord and 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: August 21, 2014

Residential Tenancy Branch

