



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. The hearing was set for 10:30 am and the landlord appeared at that time. The tenant did not appear until 10:41 am just as I was about to dismiss his application. As the tenant appeared before I ended the call I went ahead with the hearing.

Although the landlord had not had made a formal application for dispute resolution claiming against the security deposit she indicated a desire to have her claims heard and determined at this time and said that any evidence she would be relying on was contained in the evidence package filed by the tenant. The tenant agreed that he wanted to have all issues heard and decided at this time. Accordingly, I heard evidence and will render a decision on the landlord's claim for damages as well as the tenant's claim for return of the security deposit.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so , in what amount?

Background and Evidence

This month-to-month tenancy commenced September 1, 2011. There was a written tenancy agreement. Although the agreement was not filed in evidence both parties testified that it was one agreement with two tenants named on it.

The monthly rent was \$1200.00. Throughout the tenancy each tenant paid \$600.00 directly to the landlord.

The tenants also split payment of the security deposit. The applicant paid \$300.00 towards the security deposit; the other tenant paid \$200.00.

The landlord testified that a move-in inspection was conducted and a move-in condition inspection report completed. She testified that she did not have a copy of it as her

practise had been to staple it to the tenant's copy of the tenancy agreement. The tenant testified that to the best of his recollection a move-in inspection was not conducted.

The tenancy ended April 30, 2014. The other tenant moved out at the beginning of April; the tenant moved out prior to April 23; the tenant's girlfriend finished moving out the last of her items sometime after that.

The landlord acknowledged that the tenant provided his forwarding address to her in writing sometime prior to the end of May.

Because the staggered move-out and some other circumstances, a move-out inspection was not conducted and a move-out condition inspection report was not completed.

The landlord returned \$156.26 to the tenant by a cheque dated April 30, 2014. She also sent \$156.26 to the other tenant.

The landlord claimed \$147.00 for carpet cleaning. The tenant said they cleaned the carpets the best they could but they did not have anyone come in to clean them.

The landlord claims \$4.48 for a missing light. The tenant says he replaced all the burned out light bulbs he could find.

The landlord claimed \$140.00 for cleaning calculated as seven hours labour at \$20.00 per hour. She testified that the rental unit had been wiped down but it had not been thoroughly cleaned. In particular, the stove, the utility room and the cellar, and the blinds had not been cleaned. A substantial amount of debris had been left, including a broken desk.

The tenant testified that he, his girlfriend, his mother, and some friends had spent several days cleaning. His mother cleaned the stove and oven; the blinds had been dusted; and the broken desk and other items left behind belonged to his roommate.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

Although the landlord and the tenants managed their affairs as if there were two separate tenancy agreements, in fact the tenants were co-tenants on the same tenancy

agreement. The legal consequences of this are explained in *Policy Guideline 13: Rights and Responsibilities of Co-tenants*:

“Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. . . .

A security deposit or pet damage deposit is paid in respect of a particular tenancy agreement. Regardless of who paid the deposit, any tenant who is a party to the tenancy agreement to which the deposit applies may agree in writing to allow the landlord to keep all or part of the deposit for unpaid rent or damages, or may apply for arbitration for return of the deposit.”

Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises sets out the standard arbitrators are to apply when considering claims for cleaning and repairs. The requirements set out in the addendum to this tenancy agreement are very similar to the requirements set out in the *Guideline*.

The *Guideline* states that a tenant will be held responsible for steam cleaning or shampooing the carpet at the end of a tenancy of a year or more. Accordingly, I allow the landlord’s claim of \$147.00 for carpet cleaning.

On claims for cleaning evidence such as photographs or a completed move-out condition inspection report are often very helpful. Both parties testified that some cleaning had been done; the only issue is whether sufficient cleaning had been done.

On the one hand the landlord’s distinction between wiping something down and properly cleaning it is a valid one. On the other hand, as the *Guideline* explains:

“The tenant must maintain ‘reasonable health, cleanliness and sanitary standards’ throughout the rental unit . . . and is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. . . . An arbitrator must determine whether

or not the condition of the premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.”

The tenant acknowledges that there was debris left in the rental unit but it belonged to his roommate. Even if this is a true statement, from a legal point of view it is irrelevant.

After considering all of the evidence before me I award the landlord \$100.00 for cleaning, including garbage removal. I do not think the unit was left as clean as the tenant described but the evidence does not allow me to conclude that none of the cleaning was to take the unit past ordinary standards of cleaning to the landlord's own standards.

The only evidence regarding the light bulb is the contradictory sworn testimony of the parties. This is not enough to tip the balance of probabilities in the landlord's favour. Accordingly, I must dismiss the claim for the light bulb.

In total I find that the landlord is entitled to payment from the tenants of the sum of \$247.00.

The way in which arbitrators are to calculate the amount owed when there has been a partial reimbursement by the landlord is explained in *Policy Guideline 17: Security Deposit and Set off*. Basically the amount of the security deposit is doubled and then the partial payment is deducted from that amount. Accordingly, I find that the landlord must pay the tenants \$687.48 (double the security deposit of \$1000.00 less the partial payments of \$156.29 and \$156.26).

As the tenant has been substantially successful on his application he is entitled to reimbursement from the landlord of the \$50.00 fee he paid to file it.

In total I find that the tenant is entitled to payment from the landlord of the sum of \$737.48.

I have found that the landlord is entitled to payment of \$247.00 from the tenant and that the tenant is entitled to payment of \$737.48 from the landlord. Setting one amount off against the other, I find that the tenant is entitled to a monetary order pursuant to section 67 in the amount of \$490.48.

Conclusion

After setting off an award in favour of the landlord against an award in favour of the tenant a monetary order in favour of the tenant in the amount of \$490.48 has been made. If necessary, this order may be filed in the 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: September 23, 2014

Residential Tenancy Branch

