



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNR, MND, FF
For the tenant: MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for unpaid rent and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenant applied for a monetary order for a return of her security deposit and pet damage deposit, and for recovery of the filing fee paid for this application.

Both parties attended the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, make submissions to me and respond to the other's evidence.

At the outset of the hearing, both parties confirmed receipt of the other's documentary evidence.

I have reviewed the oral and written evidence of the parties 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

1. Is the landlord entitled to retain the tenant's security deposit and pet damage deposit, further monetary compensation, and to recovery of the filing fee paid for this application
2. Is the tenant entitled to a return of her security deposit, pet damage deposit. and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on March 1, 2014, ended on April 11, 2014, the monthly rent was \$1650 and the tenant paid a security deposit of \$825 on February 5, 2014 and a pet damage deposit on February 7, 2014.

Landlord's application-

The landlord's monetary claim is \$1257.16, comprised of \$825 for unpaid rent for April 2014, \$21.66 for paint, \$19 for caulk, \$150 for cleaning, and \$241.50 for carpet cleaning.

The landlord's relevant documentary evidence included the written tenancy agreement, written authority from the tenant to use the security deposit as the remaining monthly rent for April 2014, email communication between the parties, a notice dated April 8, 2014, from the tenant to the landlord notifying him she was vacating the rental unit on April 14, 2014, receipts for home repair supplies, a carpet cleaning receipt, and a move-in and move-out condition inspection report.

As to the unpaid rent, the landlord submitted that the tenant gave insufficient notice that she was vacating the rental unit, and paid only half a month's rent for April, with a written notice that he was to use the tenant's security deposit for the balance of the rent for April. The tenant, however, put a stop payment on the cheque for \$825 which was given to the landlord, received cash of \$825, and the landlord requests to retain the tenant's security deposit of \$825 for the full payment of rent for April.

As to the damage and cleaning of the rental unit, the landlord claimed that the tenant committed damage beyond reasonable wear and tear and did not properly clean the rental unit prior to vacating. The landlord submitted further that although the walls were not in great shape prior to the tenancy beginning, it was necessary to make repairs to the walls. The landlord submitted further that the rental unit did not appear to have been cleaned and that there was an odour in the carpet, requiring a professional cleaning.

Tenant's response-

The tenant submitted that she did agree the security deposit could be used as the balance of the unpaid rent, but that was prior to being requested to leave by April 10.

The tenant denied leaving the rental unit dirtier than when the tenancy began and that she cleaned the rental unit. The tenant submitted further there were little or no changes noted on the move-out condition inspection report, that the rental unit had not been cleaned at the start of the tenancy, and a lot of conditions were not listed on the move-in condition inspection report due to the landlord, who had lived there, vacating very quickly.

The tenant submitted that the landlord had a rabbit in the rental unit, that the carpet was not cleaned prior to the tenancy beginning, and the landlord's furniture was still in the rental unit at the initial walk-through.

Tenant's application-

The tenant's monetary claim is \$1850, comprised of her security deposit of \$825 and pet damage deposit of \$100, both doubled.

The tenant submitted that the landlord was provided her written forwarding address within 2 weeks of the end of the tenancy, by regular mail and email.

The tenant submitted the written tenancy agreement and a signed statement from the landlord.

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.

Landlord's application-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. I find that the tenant owed rent for the month of April 2014 under the terms of the tenancy agreement, and paid only half, or \$825.

I therefore find the landlord is therefore entitled to a monetary award of \$825 for the balance the rent for April 2014.

As to the cleaning, repairs and carpet cleaning, I am not convinced by the condition inspection report or the landlord's evidence that the tenant damaged the rental unit during a tenancy lasting less than a month and a half or that the tenant left the rental unit unreasonably clean, as is her requirement under section 37 of the Act. I also was not presented evidence that the carpet had been cleaned or professionally cleaned by the landlord after he and his family vacated and prior to the tenant moving in. Due to this and the short term of the tenancy, I find the tenant is not obligated for a professional cleaning of the carpet.

Due to the above, I find the landlord submitted insufficient evidence to prove his claim for cleaning, carpet cleaning, and repair to the rental unit, and his claim for \$432.16 is dismissed.

Tenant's application-

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

In the case before me I find that the landlord filed his application claiming against the tenant's security deposit and pet damage deposit within 15 days of the tenancy ending, as the tenancy ended on April 11, 2014, and the landlord filed his application on April 24, 2014. I also find that the tenant submitted inconclusive evidence as to when she provided her written forwarding address.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit and pet damage deposit

As the landlord has complied with the Act by making a timely application, I dismiss the portion of the tenant's application seeking double the security deposit and pet damage deposit.

Both applications-

The landlord has been granted a monetary award of \$825. I direct the landlord to retain the tenant's security deposit in satisfaction of his monetary award.

I find the tenant is entitled to a monetary award of \$100, for the return of her pet damage deposit, as the landlord's monetary award is less than the security deposit and pet damage deposit. I further direct the landlord to return to the tenant the amount of \$100 and grant her a monetary order in that amount.

As both applicants have had some success with their applications, I decline to award either recovery of their filing fee paid for their applications.

Conclusion

The landlord is granted a monetary award of \$825, and he is directed to retain the tenant's security deposit in satisfaction of that award.

The tenant has been granted a monetary order for \$100, the amount of her pet damage deposit, and it is enclosed with her Decision.

Should the landlord fail to return the tenant's pet damage deposit of \$100 without delay, the tenant may serve the order on the landlord and 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*.

Dated: September 8, 2014

Residential Tenancy Branch

