



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CONFIDE ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 18, 2014, to obtain a Monetary Order to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by the Tenant on December 29, 2014.

The Tenant testified that he did not receive the Landlord's evidence until January 9, 2015 and argued that he has not had an opportunity to review that evidence prior to this hearing. At the time of this hearing no evidence had been received on the Residential Tenancy Branch (RTB) file from the Landlord. The Landlord testified that their evidence was served via registered mail to the Tenant and dropped off at the RTB on January 6, 2015. When asked why they delayed in serving their evidence the Landlord stated that the manager had been ill.

The Residential Tenancy Branch Rules of Procedure (Rules of Procedure) # 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

The Rules of Procedure # 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing, if it cannot be submitted at the time application is filed, then it must be received by the respondent and the RTB not less than 14 days before the hearing.

The Rules of Procedure # 3.14 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

In this case the Landlord filed their application July 18, 2014, under the *Residential Tenancy Act* section 67 for monetary compensation, and did not serve their evidence to the Tenant or the RTB until January 6, 2015, six days before the scheduled teleconference hearing.

Based on the foregoing, and in the absence of any proof that there were exceptional circumstances that delayed the Landlord's submission by over five months, I declined to consider the Landlord's late documentary evidence if received on file after the hearing. I did however consider the Landlord's oral testimony, pursuant to the Rules of Procedure # 3.14.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord met the burden of proof to obtain a Monetary Order?

Background and Evidence

The undisputed evidence was that the Tenant entered into a month to month tenancy that began on August 1, 2013. Rent of \$850.00 was due on or before the first of each month and on July 18, 2013 the Tenant paid \$425.00 as the security deposit. The Tenant provided 30 days written notice to end the tenancy effective the end of June 2014 and the keys were left inside the rental unit

The Landlord testified that when the Tenant moved out he did not properly clean the rental unit. As such they are seeking to retain \$185.00 from the Tenant's security deposit for cleaning costs incurred to clean: carpets, drapes, stove, oven, toilet bowl and cabinets. The Landlord stated that she thinks the manager completed a move in and move out condition inspection report form and that the Tenant refused to sign it.

The Tenant testified that he had cleaned the carpets twice during his tenancy and that he left the unit in the same or cleaner condition than what it was at the start of his tenancy. He disputed the Landlord's claim in its entirety and noted that he received a partial refund of \$240.00 in the form of a cheque that was included in the evidence he received from the Landlord on January 9, 2015.

The Landlord stated that the Tenant's video provided in evidence only displays the unit at the end of the tenancy and does not show the inside of the oven or the inside of the toilet. She noted that the Landlord always has the carpets professional cleaned at the end of each tenancy.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Landlord has the burden to prove the rental unit required additional cleaning at the end of the tenancy. In the absence of any documentary evidence from the Landlord and upon review of the Tenant's evidence which included a video of the rental unit at the end of the tenancy, I find the Landlord provided insufficient evidence to meet the burden of proof for a monetary order. Accordingly, I dismiss the Landlord's claim without leave to reapply, and I Order the Landlord to return the balance of the Tenant's security deposit of \$185.00 to the Tenant forthwith.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's claim, without leave to reapply.

In the event the Landlord does not comply with my order to return the balance of the security deposit forthwith, and if the Landlord's previous cheque for \$240.00 does not clear the bank, then the Tenant may serve the Landlord with the enclosed Monetary Order for **\$425.00**. This Order is legally binding and may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court

For clarity, if the previous cheque for \$240.00 clears the bank then the above mentioned monetary order may be enforced for the balance owed which would be \$185.00.

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: January 13, 2015

Residential Tenancy Branch

