Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, MNDC, FF
For the landlord: MNSD, MNDC, FF

Introduction

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

The tenant applied for a return of her security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss for her deposits doubled, and for recovery of the filing fee paid for this application.

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

At the outset of the hearing, neither party raised an issue or concern regarding the other's evidence or application.

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 relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

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 tenant entitled to a monetary order comprised of her security deposit and pet damage deposit, doubled, and for recovery of the filing fee paid for this application?

2. Is the landlord entitled to retain the tenants' security deposit and pet damage deposit, for further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on March 29, 2013, ended on May 31, 2014, monthly rent was $1725, and the tenant paid a security deposit and a pet damage deposit of $862.50 each. The landlord has retained both deposits.

Tenant's application-

The tenant's monetary claim is in the amount of $3450, comprised of her security deposit of $862.50, doubled to $1725, her pet damage deposit of $862.50, doubled to $1725, and for recovery of the filing fee paid for this application.

The tenant submitted that she provided the landlord with her written forwarding address on May 31, 2014, on his copy of the final condition inspection report, and confirmed the address in an email sent on June 10, 2014. The landlord has not returned any portion of their security deposit or pet damage deposit, according to the tenant.

Landlord's response-

The landlord confirmed receipt of the tenant's written forwarding address on the date and manner mentioned by the tenant.

Landlord's application-

The landlord's monetary claim is as follows:

Flooring, stair nosing	$124.44
Laminate	$297.47
Laminate	$197.14
Work and materials	$400
Work	$1200
Loss of rent revenue	$3450
Mirrors	$75
Freezer recycle	$85

In support of his application, the landlord submitted he was not in the country most of this tenancy, as he is only in Canada approximately 4 weeks a year, on a job assignment. In his place, the landlord's wife and adult son attended the move-out inspection on May 31, 2014, with the tenants.

The landlord stated that his wife and son found the rental unit to be reasonably clean at the move-out inspection, but that did notice a strong pet urine smell in the rental unit, which was not noted on the condition inspection report.

The landlord submitted that due to the urine damage, the laminate flooring and carpet had to be replaced, as shown by his receipts. In response to my question, the landlord submitted that the laminate was the original flooring, from 2004.

Due to the pet damage, the landlord claimed he was entitled to recover the cost of materials and labour for flooring replacement, as reflected in his receipts provided.

The landlord also submitted some undated photographs of some areas of the rental unit, some not clear.

As to his claim for loss of rent revenue, the landlord submitted that he did advertise the rental unit right after receiving the tenant's notice to vacate, but that he did not receive the notice, effective on May 31, 2014, until May 2, 2014. The landlord submitted further that the insufficient notice and the state of the rental unit prevented him from obtaining new tenants until August 2014, and that he should recover the loss of rent revenue for June and July 2014. The landlord submitted proof that he created an account with a free, online advertising site, but did not submit copies of the advertisements or the date of the advertisements.

The landlord also claimed the loss of broken mirrors, not yet replaced, and for recycling costs of the freezer left by the tenant, not yet incurred.

Tenant's response-

The tenant submitted that they sent their notice to vacate on May 1, 2014, in an email, as this was the only way to communicate with the landlord as he was out of the country so much and all their previous deadlines had been on the 1st day of the month.

The submitted further that they noticed a pet urine smell when they first moved into the rental unit, but learned to live with it.

As to the freezer, the tenant submitted that they were going to retrieve the freezer; however, the landlord's son informed them that they could leave the freezer until new tenants moved in and decided if they wanted to keep it, or if not, that he, the son, would take the freezer.

As to the mirrors, the tenant submitted that the mirrors were broken in the move.

The tenant submitted that in an email to them on June 10, 2014, the landlord spoke about returning their security deposit and pet damage deposit to the tenants, but failed to do so.

Analysis

Tenants' 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 or pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

In the case before me, I find the tenant submitted sufficient evidence to show that the landlord received the tenant's written forwarding address on May 31, 2014, on the condition inspection report, as also confirmed by the landlord, the tenancy ended on May 31, 2014, and therefore the landlord had until June 15, 2014 to file an application for dispute resolution claiming against the tenant's security deposit and pet damage deposit or to return the deposits in full; however, the landlord did not file his application for dispute resolution until October 14, 2014.

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.

I find the tenant is entitled to recovery of her filing fee paid for this application in the amount of $50.

Due to the above, I approve the tenant's application and grant her a monetary award of $3500, comprised of her security deposit of $862.50, doubled to $1725, pet damage deposit of $862.50, doubled to $1725, and her filing fee of $50, for a total monetary award of $3050.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $3500, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served on 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.

Landlord's application-

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 of their actions or neglect, 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.

Costs for flooring replacement; lost rent due to flooring condition-

I find the landlord submitted insufficient evidence to support his claim for flooring replacement, which included material and labour. I relied upon the condition inspection report, as completed by the landlord's adult son and the tenant, which did not mention any detection of pet odour or other issues with the state of the rental unit at the end of the tenancy. The condition inspection report indicates that the state of the rental unit was left at least reasonably clean, even as confirmed by the landlord and as required under section 37(2) of the Act, and that the landlord's receipt evidence for carpet replacement for laminate does not directly attribute this tenant's pet to alleged damage. I find it just as likely as not that the landlord had previous tenants who had pets, as submitted by the tenant and not denied by the landlord.

Further, the landlord in an email to the tenant on June 3, 2014, supplied by the landlord, informed the tenant that there were "No questions for property return condition" and that the landlord would return the deposit in full, even if legally late with their notice to end the tenancy.

As to the landlord's claim for loss of rent revenue, I was not convinced by the landlord's evidence that the landlord took reasonable steps to minimize his loss immediately after being notified by the tenants of their vacancy. The landlord failed to submit copies of the advertisements or the dates so that I was able to view the form or content. I also was persuaded by the fact the landlord did not undertake any repairs until July 9, 2014, at the earliest, as shown by his receipts, meaning the rental unit was left empty and unattended until the landlord returned from overseas. The fact that the landlord lives away from the country most of the year is not a reason to delay attending to the state of the rental unit and then attempting to hold the tenants responsible.

Overall, I find the evidence of both parties show that the tenant complied with her obligations under the Act and left the rental unit at least reasonably clean and undamaged.

Due to the above, I therefore find the landlord has not supported his claim for flooring damage and replacement and for loss of rent revenue and dismiss all his claim for flooring replacement, materials and labour, and for loss of rent revenue for June and July 2014, without leave to reapply.

As to the landlord's claim for broken mirrors, I find the landlord submitted insufficient evidence to support his request for $75. The landlord stated that the claim was based upon an estimate, but as there was no indication that the mirrors have been or will ever be replaced, I find the landlord has not shown he has suffered a loss. I therefore dismiss his claim of $75 for broken mirrors.

As to the landlord's claim for freezer recycling, I do not accept that the landlord has or will ever incur a cost for recycling. The landlord failed to convince me that the freezer will be removed or disposed, and I therefore find that landlord has not shown that he has or will ever suffer a loss for this issue. I therefore dismiss his claim for $85.

As I have dismissed the landlord's monetary claim, I decline to award him recovery of his filing fee.

Conclusion

The tenant's application is granted and she has been awarded a monetary order of $3500.

The landlord's application is dismissed.

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: February 19, 2015

Residential Tenancy Branch