



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Procedural Matter

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord"), the landlord's building manager for the residential property, and the tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Evidence submitted with the landlord's application, filed on September 18, 2014, was a copy of the written tenancy agreement, an apartment check in report, dated September 1, 2013, a written notice from the tenant, dated July 28, that she was vacating the rental unit on August 31, 2014, a Notice of a final opportunity to schedule a condition inspection, an apartment check-out report, dated August 31, 2014, a receipt for cleaning the rental unit, dated August 31, 2014, for an amount of \$240.00, and the notice from the tenant providing her written forwarding address and request for her security deposit.

On April 2, 2015, the Residential Tenancy Branch ("RTB") received the landlord's 55 pages of additional evidence, including copies of photographs of the rental unit, along with the documents filed with their application. Additionally, on April 8, 2015, the RTB received the same evidence, but with clearer black and white copies of the photographs of the rental unit.

In response to my question as to why the landlord's additional evidence was not filed with their application or when the evidence became available, the landlord stated only that they had to compile the photographs.

In considering whether to accept the landlord's additional evidence, I relied upon 2.5 of the Dispute Resolution Rules of Procedure (Rules), which states that to the extent possible, the applicant must submit with their application all documentary and digital evidence to be relied upon at the hearing. The application and the evidence then must be served on the other party within 3 days of the hearing package being made available to the applicant by the RTB. In this case, the landlord's evidence of the copies of the photographs, were filed approximately 6

months after filing their application, and the clearer copies of the photographs were not received by the RTB until 8 days prior to the hearing.

Due to the above, as provided for in 3.11 of the Rules, I decline to accept the landlord's additional evidence, not submitted with their application as I find the landlord unreasonably delayed service of their evidence for nearly 6 months and the week prior to the hearing,. I also determined that to accept the landlord's late evidence would result in a breach of the principles of natural justice, under Rule 3.12.

The hearing proceeded with the documentary evidence submitted by the landlord with their application and the parties' oral evidence. The parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing in accordance with the Rules, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to retain a portion of the tenant's security deposit in satisfaction of their monetary claim and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement shows that this tenancy began on September 1, 2013, monthly rent was \$1120.00, and the tenant paid a security deposit of \$560.00 at the beginning of the tenancy.

The parties agreed the tenancy ended on August 31, 2014, and that the landlord has retained the tenant's security deposit pending the outcome of this hearing.

The landlord's monetary claim is \$180.00 for costs of cleaning the rental unit.

In support of their application, the landlord submitted that the tenant did not properly clean the rental unit prior to her vacating the rental unit, leaving such things as spills, a build-up around the toilet, the bathroom sink, the stove/oven, and unswept floors.

The landlord submitted that although the tenant attended the move-out inspection, the building manager became uncomfortable with the aggressive behaviour of the tenant, as the tenant believed the inspection was being too strict. A threat to call the police was also made, according to the landlord.

The landlord confirmed that she expected the rental unit to be in the same condition at the end of the tenancy as when the tenant took possession at the beginning of the tenancy. The landlord then later said she expected tenants to clean items such as the oven, refrigerator, and toilet.

Tenant's response-

The tenant submitted that although she paid rent through August 31, 2014, she vacated the rental unit to due bedbugs, and the building manager called to say they would help her move out.

The tenant submitted further that the building manager was being aggressive during the inspection, that building manager was being overly picky, and that no matter how clean the rental unit was, it was not good enough for the building manager. The tenant pointed out that one of the pictures sent by the landlord showed a hair.

The tenant submitted further that the rental unit was cleaner when she left than when she moved in.

Analysis

I have reviewed all oral and documentary evidence 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.

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.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In reviewing the landlord's acceptable evidence, I find the apartment check in report, presumably used by the landlord as a move-in condition inspection report, to be deficient as required by the Act and the Residential Tenancy Regulations. Section 20 of the Regulations require that a condition inspection report contain, among other things, the landlord's legal name, the address of the rental unit being inspected, the date on which the tenant is entitled to possession of the rental unit, the address for service of the landlord, and for the purposes of this landlord's claim, a statement of the state of repair and general condition of each room in the rental unit and statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement. In this case the check in report contained none of this information. The kitchen and bathroom were the only two rooms

specifically mentioned, but no statement of condition was made, other than a single check mark denoting "clean". The other items or fixtures were listed under the category "General", such as carpets, blinds, light fixtures, doors, windows or sills, again just were marked with a check mark, without any statement of condition.

Due to the deficiencies, I could not rely on the apartment check in report. For many of the same reasons, I could not rely on the apartment check out report as there was no general statement as to the condition of each of the items, other than a closet door. The landlord additionally further out to the side of the items, rather than a statement or description of the items listed, placed the letter "R", denoting cleaning required.

On this document, the landlord also claims for 16 hours for cleaning time at \$15.00 per hour, for a total of \$180.00, and that the tenant refused to participate.

As I have found that I could not rely on the landlord's check in and check out report, the only other accepted evidence was the testimony of each party. Although the landlord the tenant failed to leave the rental unit reasonably clean, the tenant denied that she left the rental unit dirty and unacceptable. The tenant submitted that she cleaned the rental unit and that the landlord was too particular.

I find that, in any dispute when the evidence consists of conflicting and disputed testimony, in the absence of independent documentary evidence such as is the case here, then the party who bears the burden of proof cannot prevail on the balance of probabilities. Therefore it is not necessary for me to determine credibility or assess which set of "facts" is more believable as I find disputed testimony does not sufficiently meet the burden of proof. I also note that in this case, at any rate, I did not find one party more credible than the other.

I therefore find that the landlord has failed to submit sufficient evidence to meet their burden of proof to support their monetary claim that the tenant failed to comply with section 37 of the Act, and I dismiss the landlord's application, without leave to reapply.

As to the tenant's security deposit, Residential Tenancy Branch Policy Guideline 17 states the Arbitrator will order a return of the tenant's security deposit on the application of the landlord claiming against the security deposit, as applicable.

In the case before me, as I have dismissed the landlord's application claiming against the security deposit and as I find that the tenant has not extinguished her right to her security deposit, I order the landlord return the tenant's security deposit in full, forthwith. I note that I determined that the tenant did not extinguish her rights to the security deposit under section 36(b) of the Act as, despite the check out report mentioning that the tenant refused to participate, the landlord in testimony stated that the parties did perform a final inspection.

As I have ordered that the landlord return the tenant her security deposit, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$560.00, 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.

Conclusion

The landlord's application is dismissed.

The tenant has been granted a monetary order for the return of her full security deposit.

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: April 25, 2015

Residential Tenancy Branch

