



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on October 07, 2014 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain part of the security deposit in compensation for treating the rental unit for fleas?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on November 01, 2012;
- that a condition inspection report was completed on November 01, 2012;
- the Tenant paid a security deposit of \$250.00;
- the tenancy ended on August 30, 2014; and
- the Tenant provided a forwarding address, in writing, on September 22, 2014.

The Landlord and the Tenant agree that the Tenant informed the Landlord that he was available to inspect the rental unit on August 30, 2014. The Agent for the Landlord stated that he was unable to meet with the Tenant on August 30, 2014. The parties agree that the Landlord did not suggest an alternate date/time to inspect the rental unit,

either verbally or in writing. The Agent for the Landlord stated that he completed a condition inspection report on September 07, 2014, in the absence of the Tenant.

The Landlord is seeking compensation, in the amount of \$119.31, for treating the rental unit for fleas. The Agent for the Landlord stated that when he inspected the rental unit at the end of the tenancy he observed several fleas and was bitten by fleas several times.

The Tenant stated that he “did not notice” fleas in the rental unit and that his brother had a cat in the unit for approximately two months in July and August of 2014.

The Landlord stated that he hired a “handyman” to treat the rental unit for fleas. He stated that although this individual does not have a pesticide license, he is a licensed biologist with experience in pest control. The Landlord submitted an invoice from this individual, which indicates there was a “heavy flea infestation, requiring two treatments”.

The Landlord and the Tenant agree that when the occupants of the lower suite moved out, approximately four to six months after this tenancy ended, the Landlord discovered fleas in that unit. The Tenant speculates that, the fleas could have migrated from the lower suite to his rental unit, given this residential complex is very old.

Analysis

Section 35(2) of the *Residential Tenancy Act (Act)* stipulates that a landlord must offer a tenant at least two opportunities to participate in an inspection of the rental unit at the end of the tenancy, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant’s right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

The undisputed evidence is that the Landlord did attempt to schedule a time/date to inspect the rental unit, either verbally or in writing. As the Landlord did not offer the Tenant with an opportunity to inspect the rental unit at the end of the tenancy, I find that the Landlord failed to comply with section 35(2) of the *Act*.

Section 36(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 35(2) of the *Act*. As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the \$250.00 security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the security deposit to the Tenant.

On the balance of probabilities, I find that the Tenant failed to comply with section 37(2) of the *Act* when he failed to treat the rental unit for fleas at the end of the tenancy. I therefore find that the Landlord is entitled to compensation for treating the unit for fleas, in the amount of \$119.31.

In determining there were fleas in the unit at the end of the tenancy, I was influenced by the testimony of the Agent for the Landlord, who observed fleas in the unit while he was completing the final inspection report. I find this testimony more compelling than the Tenant's testimony that he "did not notice" fleas, as it is possible that the Tenant simply did not react to being bitten and that he did not, therefore, notice their presence.

In determining there were fleas in the unit at the end of the tenancy, I was heavily influenced by the invoice from the person who treated the rental unit for fleas, as it was this person's opinion that the rental unit was heavily infested. I find it highly unlikely that the Landlord would have paid to have the rental unit treated for fleas and that the unit would have been treated on two occasions, unless a problem with fleas existed.

In determining this matter I have placed little weight on the Tenant's submission that the fleas could have originated in the lower suite and travelled through the walls to his rental unit. The Tenant submitted no evidence to support this speculation and I have no personal knowledge that would suggest this is how fleas typically infest a rental unit. As

it is commonly understood that fleas are typically transported by pets, I find it far more likely that the cat that was in the rental unit for approximately two months was the source of the infestation.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant has established a monetary claim, in the amount of \$500.00, which is double the security deposit.

The Landlord has established a monetary claim, in the amount of \$169.31, which is comprised of \$119.31 for a flea treatment and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

After offsetting the two claims, I grant the Tenant a monetary Order for the amount \$330.69. In the event the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia 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: May 11, 2015

Residential Tenancy Branch

