



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to keep a part of the tenants' security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application

This hearing began on April 2, 2015, and dealt only with the tenants' request to adjourn the hearing as the female tenant, "CK", was at the hospital giving birth to their child, and tenant "CO" was with CK at the hospital. The request was granted and an Interim Decision which was entered on April 7, 2015, should be read in conjunction with this Decision and further, it is incorporated by reference herein.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the merits of the landlord's application. The parties were also informed that no further documentary evidence would be accepted during the period of adjournment, and none was submitted.

At the present hearing, the landlord and CK attended, were provided the opportunity to present their evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

Both parties confirmed receipt of the other's documentary and photographic evidence and there was no issue regarding the service of the application to both tenants.

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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to keep the portion of the tenants' security deposit she has retained and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that the tenancy began on February 1, 2013, ended on August 31, 2014, monthly rent was \$1600.00, and that the tenants paid a security deposit of \$750.00. From that security deposit, the landlord has returned the amount of \$315.15.

The landlord's monetary claim is \$434.49, comprised of the following:

Carpet cleaning, bedroom	\$94.50
Cleaning	\$150.00
Landlord cleaning, oven	\$75.00
Broken toilet seat	\$39.99
Repair of gouge in wall	\$25.00
Repair of exposed wires	\$50.00

The landlord's relevant documentary and photographic evidence included, but was not limited to, receipts for the costs claimed, the written tenancy agreement, a move-in and move-out condition inspection report, and photographs of the portions of the rental unit for which the landlord was seeking compensation. I note that the photographs were grainy and not clear.

In support of her application, the landlord submitted there was an inspection of the rental unit with CK on the last day of the tenancy, and the condition inspection report was completed and signed by the tenant. The landlord submitted further that 4-5 days later, she attended the rental unit with her realtor, who noticed that there were gouges in the bedroom closet, the top of the inside of the oven was dirty, that there was white foam left on the mirrors, and that the carpet was not clean. The landlord also mentioned that the realtor pointed out candle wax on the floor and that an oversized toilet seat needed to be replaced.

The landlord submitted that due to the newly discovered, alleged damage and cleaning, she hired a cleaner and repair person, purchased parts, and spent 3 hours herself in cleaning the oven.

The landlord confirmed that when filing her application for dispute resolution, she added items to the condition inspection report, noting damage or other areas of concern in reference to her detailed monetary claim, further confirming these items were not listed on the condition inspection report when the tenant signed the document. The landlord confirmed further that the tenants were not invited back to the rental unit for another inspection.

Tenants' response to the landlord's application-

In addition to their documentary and photographic evidence, the tenant submitted she and the landlord had a thorough inspection on August 31, 2014, and no issues or damage was noted either by the landlord or on the condition inspection report. According to the tenant, the landlord stated she would be returning their security deposit.

The tenant submitted that the landlord knew that they moved just around the corner from the rental unit and that they could return to the rental unit if there had been issues, as they would not leave a rental unit unclean. The tenant submitted that the state of the rental unit was left at a high standard according to the standards of the Act.

The tenants questioned the authenticity of the condition inspection report if the landlord made alterations after it had been signed. The tenant confirmed they were not told or invited to another inspection of the rental unit.

The tenants' relevant documentary and photographic evidence included a written submission, their copy of the condition inspection report with highlighted changes made by the landlord after their signature on the report, and photographs of the rental unit on the day of inspection.

Analysis

Based upon the oral, written, and photographic evidence before me, and upon a balance of probabilities, the following findings are made.

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 results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from the that party not complying with the Act, the regulations or a tenancy agreement, and order that that party to pay compensation to the other party.

Under section 38(1) of the Act, a landlord is required to either return a tenant's security 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. In this case, as the landlord filed her application on September 11, 2014, claiming against the security deposit, I find she complied with this section of the Act, as the last day of the tenancy was August 31, 2014.

As to the landlord's claim for damage and cleaning, the landlord confirmed altering the move-out condition inspection report at the time she was making her application to include notations supporting her claim and well after the parties had signed the document at the final inspection. I therefore found I could not rely on this document to support any of the landlord's claims.

I inform the landlord that I do not find any situation where it is an acceptable practice to alter a document after that party has signed the document, unaware that changes will be made to suit the purposes of the one making the alterations.

If the landlord has any question as to the legality of altering documents after the other party has signed that document, the landlord is advised to seek the counsel of a lawyer.

I also could not rely upon the landlord's photographs as there was no evidence to suggest they were taken the day of the final inspection with the tenant present and the clarity of the photographs was grainy.

Additionally, I have reviewed the tenants' photographs of the rental unit taken on the day of the final inspection and find that the tenants not only met their obligation under section 37 of the Act to leave the rental unit reasonably clean, they far exceeded that requirement. I found the rental unit to be in an immaculate condition.

Due to the landlord's insufficient and altered evidence and to the tenants' evidence, I find the landlord has submitted insufficient evidence to support her application, and it is dismissed, without leave to reapply.

As I have dismissed the landlord's application, I likewise decline to award her recovery of her filing fee.

As I have dismissed the landlord's application claiming against the tenants' security deposit, pursuant to section 62(3) of the Act, I order that she return the balance of the security deposit, or \$434.49, to the tenants, forthwith.

To give effect to this order, I grant the tenants a monetary order in the amount of \$434.49, the balance of their security deposit.

The final, legally binding monetary order is enclosed with the tenants' Decision, and should the landlord fail to pay the tenants this amount without delay, the order may be served upon the landlord and filed in the Provincial Court of British Columbia (Small Claims) for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The landlord's application is dismissed, without leave to reapply, and she has been ordered to return the balance of the tenants' security deposit.

The tenants are granted a monetary order in the amount of the balance of their 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: June 4, 2015

Residential Tenancy Branch

