



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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 of the tenant's security deposit and pet damage deposit and for recovery of the filing fee paid for this application.

The landlord and tenant attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

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.

Issue(s) to be Decided

Is the landlord entitled to retain the tenant's security deposit and pet damage deposit and to recovery of the filing fee paid for this application?

Background and Evidence

Although the landlord submitted that there was a written tenancy agreement, I was not provided a copy of the document.

The landlord submitted without dispute that the tenancy began on October 1, 2011, ended on March 31, 2014, ending monthly rent was \$895.00, and the tenant paid a security deposit of \$215.00 and a pet damage deposit of \$100.00.

The landlord's monetary claim is \$315.00. The landlord's application shows he wants to keep the tenant's security deposit and pet damage deposit, after receiving the tenant's written request on November 2, 2014.

In support of his application, the landlord submitted after this tenancy ended, he had to pull up the carpet and replace it with laminate flooring, due to tenant damage. The landlord submitted a copy of a receipt for the flooring. The landlord stated that the age of the carpet was 7-8 years old at the end of the tenancy.

The landlord submitted additionally that the rental unit was filthy after the tenant vacated and that the rental unit was not habitable due to the smell of the carpets, including pet urine.

The landlord submitted that he provided the tenant with two opportunities to conduct a final inspection of the rental unit, but that the tenant failed to attend.

The landlord submitted further that the address on the tenant's written request was a false address, as the tenant did not reside there when he attempted to serve documents to the tenant.

The landlord confirmed not having a move-in condition inspection report.

Tenant's response-

The tenant submitted that she did not give the landlord a false address, but rather the address was that of a friend renting there and where the tenant lived temporarily; however, she never met the landlord, according to the tenant.

The tenant denied leaving her part of the rental unit messy, and that the only dirty part of the rental unit was of her roommate, who paid a separate deposit.

The tenant submitted that when she moved into the rental unit, the carpet was black and she had to clean the carpet herself. The tenant submitted further that the landlord had discussed for the last 2 ½ years that he was planning of replacing the carpet.

Analysis

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 and pet damage deposit or to file an application for dispute resolution claiming against the security deposit and pet damage deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

In this case, I do not find that the tenant's right to the security deposit and pet damage deposit has been extinguished by operation of the Act as I find there is no evidence that the landlord complied with his requirement under section 23 of the Act to conduct a move-in inspection and complete the condition inspection report.

When addressing the landlord's monetary claim, the landlord has only requested to retain the security deposit and pet damage deposit, but did not put forth a breakdown or specific claim supporting his request to retain the two deposits to satisfy any loss. The landlord's application itself is not enough to justify keeping the deposits, as there is a requirement of a loss equal to or greater than the two deposits for which the tenant would be responsible.

I cannot accept that the tenant was responsible for carpet damage as the landlord failed to submit proof of the condition of the carpet at the beginning of the tenancy. I therefore was unable to assess whether the tenant may have committed damage beyond reasonable wear and tear, as allowed under section 37 of the Act. Further, I find the landlord submitted insufficient evidence to show the condition of the rental unit at the end of the tenancy, such as would be shown through photographic or other independent evidence.

Due to the above, I find the landlord has submitted insufficient evidence to support his application, and it is dismissed, without leave to reapply.

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

As I have dismissed the landlord's application claiming against the tenant's security deposit and pet damage deposit, pursuant to section 62(3) of the Act, I order that the landlord return the security deposit of \$215.00 and the pet damage deposit of \$100.00 to the tenant, forthwith.

To give effect to this order, I grant the tenant a monetary order in the amount of \$315.00, the total of the two deposits.

The final, legally binding monetary order is enclosed with the tenant's Decision, and should the landlord fail to pay the tenant 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 he has been ordered to return the tenant's security deposit and pet damage deposit in full.

The tenant is granted a monetary order in the amount of her security deposit and pet damage 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 15, 2015

Residential Tenancy Branch

