Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction and Preliminary Matters

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 all or part of the tenant's security deposit and for recovery of the filing fee paid for this application.

This hearing began on April 21, 2015, and dealt only with the matter of the landlord's evidence. An Interim Decision was entered on April 22, 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 allow the landlord to submit proof that she had filed 9 pages of evidence with her application, as the tenant submitted he had not received the landlord's evidence and the hearing file did not contain the evidence.

During the period of adjournment, the landlord was allowed to send those 9 pages of evidence directly to me. The landlord did submit evidence after the hearing; however, the evidence sent by the landlord via facsimile was not 9 pages, but 27 pages, including a condition inspection report not earlier mentioned by the landlord, and contained no proof that each page was filed with her application as she had stated at the original hearing. Although the landlord failed to convince me that she had filed evidence with her application in advance of the original hearing, due to her failure to provide the proof that she had filed the 9 pages and due to her submission of 27 pages instead, I made the decision to accept and consider the landlord's documentary evidence.

The landlord did not raise an issue as to receipt of the tenant's evidence, which were text messages between the parties, and referred to that evidence in the hearing.

As to the tenant not attending either the original hearing or the adjourned hearing, I find the landlord submitted sufficient evidence that this tenant, "GG", was served via registered mail, as the landlord stated that GG signed for that mail, and has met her obligation under section 89(1) of the Act.

This hearing proceeded on the landlord's application for dispute resolution, where both participants were provided the opportunity to present their affirmed evidence orally, 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.

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 tenants' security deposit and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that the tenancy began on September 1, 2013, ended on August 30, 2014, monthly rent was $1550.00, and the tenants paid a security deposit of $775.00, which has not been returned by the landlord. In response, the tenant submitted that the tenancy ended on September 1, 2014, when he vacated the rental unit, having permission from the landlord to stay an extra 2 days.

The landlord's monetary claim is as follows:

Move out cleaning	$499.67
Carpet cleaning	$78.51
2 Days rent	$103.33

The landlord also claimed for costs, those being the filing fee for her application for $50.00 and registered mail expenses for $20.00.

In support of and in response to the landlord's application, the parties provided the following oral evidence-

Move out cleaning-

The landlord submitted that the tenant was required to vacate the rental unit on August 30, 2014, pursuant to the terms of the tenancy agreement and instead, the tenant did not move out until September 1, 2015. When entering the rental unit at the end of the tenancy, she found the premises to be "filthy" and that she and a housekeeper were required to work from 8:00 a.m. until 5:00 p.m. to clean the home. The amount of the claim was an average of 3 quotes from cleaning company.

The landlord submitted that although there was a move-in inspection, there was not move-out inspection with the tenant, as the first scheduled time did not work out. The landlord submitted that she sent the tenant a text message seeking to arrange another time to conduct an end of tenancy inspection and was unsuccessful in arranging a time with the tenant.

In response, the tenant submitted that the landlord never mentioned a move-out inspection to him, although the parties were in constant communication through text messaging. The tenant submitted further that he did clean the rental unit prior to vacating.

The tenant submitted further that he did leave some of her personal property in the rental unit, but with the understanding that he would be coming back to retrieve those belongings, and that the landlord was agreeable, as she said all she needed would be to get the key on September 1, 2014.

The tenant submitted further that the landlord had already informed him that her housekeeper would be doing some touch-up cleaning after he vacated.

Carpet cleaning

The landlord submitted the carpet was cleaned 3 times after the tenancy ended.

In response, the tenant submitted he had vacuumed the carpets and that there was never a discussion by the landlord that the carpets were required to be cleaned otherwise.

2 Days rent

The landlord submitted that this was not part of her original claim; however, when receiving advice from a representative from the Residential Tenancy Branch ("RTB") when making her application, she was informed to put this figure in the monetary order worksheet. The landlord confirmed that she did not lose 2 days of rent.

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.

Section 35(2) of the Act requires that the landlord offer the tenant 2 opportunities, as prescribed, for the inspection of the rental unit at the end of the tenancy. Although the landlord submitted that the opportunities offered to the tenant to inspect the rental unit at the end of the tenancy was through text message communication, the landlord offered no such proof of the text message and likewise, section 88 of the Act does not recognize text message communication as an acceptable method of delivery of documents. I therefore find the landlord submitted insufficient evidence that she offered the tenant two such opportunities to inspect the rental unit at the end of the tenancy.

As to the landlord's monetary claim, a key component in establishing a claim for damage is the record of the rental unit at the end of the tenancy as contained in condition inspection reports. Sections 35 and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, I have found that the landlord has failed to meet her obligation under of the Act of offering the tenant 2 opportunities to inspect the rental unit and completing the inspection and report resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the end of the tenancy.

In the absence of any other evidence, such as the condition inspection report or photographs prior to and after the tenancy, I do not accept the landlord's claim for damages to the rental unit attributable to the tenants. The landlord has the burden of proof on the balance of probabilities and I find the landlord's insufficient evidence does not meet the burden of proof on a balance of probabilities.

I therefore find the landlord has submitted insufficient evidence to prove her monetary claim for cleaning and carpet cleaning and I dismiss those claims.

As the landlord submitted she did not lose 2 days' rent, I dismiss that claim.

As to the landlord's claim for registered mail expenses, the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. I therefore dismiss her claim for $20.00.

As I have dismissed the landlord's monetary claim, I dismiss her request for recovery of the filing fee of $50.00.

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 claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

Section 36(2) of the Act states that the right of a landlord to claim against the security deposit for damage is extinguished if the landlord has not complied with section 35(2).

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.

In the case before me, I find that the landlord had the tenants' forwarding address on September 2, 2014, the day her application was filed, as those separate addresses were listed on her application; however, the tenants offered no proof that their address was sent to the landlord in a method recognized under section 88 of the Act.

I therefore am unable to double the tenants' security deposit. I do, however under sections 62 and 67 of the Act, direct the landlord to return the tenants' security deposit, and I grant the tenants a monetary order in the amount of $775.00.

I am enclosing the monetary order for $775.00 with the tenants' Decision. Should the landlord fail to pay the tenants this amount without delay after being served the order, the order 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 tenants are granted a monetary order in the amount of their security deposit of $775.00.

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 22, 2015

Residential Tenancy Branch