



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND; MNSD; MNDC; FF

Introduction

This matter was convened to hear the Landlord's Application for Dispute Resolution seeking a monetary order for damage to the rental unit; compensation for damage or loss under the Act, regulation or tenancy agreement; to retain the security deposit and pet damage deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord testified that he served the Tenant with the Notice of Hearing documents by registered mail sent on November 15, 2014. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. He testified that he sent copies of his documentary evidence to the Tenant "16 days ago". The Tenant acknowledged receiving the Landlord's documentary evidence on June 11, 2015. She stated that she provided the Landlord with her documentary evidence in reply on June 13, 2015, by registered mail. The Tenant provided the tracking numbers for the documents. The Landlord received the documents on June 19, 2015.

Issues to be Decided

- Is the Landlord entitled to compensation for damages to the rental unit and to apply the security deposit and pet damage deposit towards that compensation?

Background and Evidence

This tenancy ended on November 1, 2014. The Tenant paid a security deposit in the amount of \$445.00 and a pet damage deposit in the amount of \$300.00 on or about November 1, 2013.

The parties met on October 31, 2014, for a move-out condition inspection. A copy of the Condition Inspection Report was provided in evidence. The Tenant testified that

she was not provided with a copy of the Report until she was served with the Landlord's documentary evidence, "two weeks ago". The Landlord stated that the Tenant refused to sign the Report so he didn't give her a copy. He submitted that the rental unit was "in perfect condition" at the beginning of the tenancy and that the Tenant signed the move-in portion of the Report indicating that she agreed that it was in a perfect condition.

The Tenant stated that the rental unit was dirty and in need of repairs when she moved in on November 1, 2013, and that the walls were painted in "garish brightly coloured circles" in the living room and bedroom. She stated that after she complained, the building manager arranged for the carpets to be cleaned and the walls to be painted. The Tenant stated that the sliding glass door in the living room was broken and the blinds in the rental unit were dirty and broken. The Tenant stated that it took her hours to clean the rental unit, especially the kitchen because the previous occupant had left Tupperware and discarded dishes and the cupboards were sticky. The Tenant testified that the Landlord came to see her two days after she moved in with a "pre-filled condition inspection report", which he had her sign without going over the document with her. The Tenant provided written statements from witnesses who saw the condition of the rental unit at the beginning and at the end of the tenancy.

The Tenant stated that she cleaned the rental unit and shampooed the carpets at the end of the tenancy. She stated that the damages for which that the Landlord is claiming were present at the beginning of the tenancy. The Tenant provided photographs of the rental unit, taken at the beginning and at the end of the tenancy. The Tenant stated that she met with the building manager to return the keys at the end of the tenancy and wrote on the Condition Inspection Report that "the carpets were shampooed and cleaned" and initialed the change, but that this was redacted on the copy of the report that the Landlord provided in evidence. She reiterated that she was not given a copy of the Report.

The Tenant stated that the Landlord also provided an altered tenancy agreement in evidence. For example, some of the details are typewritten on the Landlord's copy and handwritten on the Tenant's copy. The Landlord's copy does not indicate that a pet damage deposit was paid, and the portion showing a 4 page addendum has been redacted.

The Landlord stated that he didn't think he had changed the Condition Inspection Report or the tenancy agreement, but he was "not sure". He testified that the Tenant's photographs of the rental unit at the beginning of the tenancy were taken before the walls were painted and the carpets shampooed.

The Landlord seeks a monetary award in the amount of \$550.00 for the cost of repairs and shampooing the carpets. The Landlord provided an invoice in evidence.

Analysis

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Landlord's claim for damage or loss under the Act and therefore the Landlord has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I prefer the Tenant's version of events with respect to the condition of the rental unit at the beginning and at the end of the tenancy, for the following reasons:

1. I find that the Landlord's evidence lacked certainty. The Landlord was "not sure" if he had altered the tenancy agreement or the Condition Inspection Report. Therefore, I find I cannot rely on the Landlord's documentary evidence because the Landlord himself is not certain if the documents were altered.
2. The invoice provided by the Landlord is in the amount of \$590.00. The Landlord's Application for Dispute Resolution indicates that the Landlord is seeking a monetary award in the amount of \$550.00. These two amounts differ and the Landlord did not provide a Monetary Order Worksheet verifying how much he is claiming and for what items.
3. The Tenant was forthright and clear in her testimony. Her photographs supported her oral testimony with respect to the condition of the rental unit at the beginning of the tenancy and at the end of the tenancy. Her witnesses' statements corroborate her version of events.

I find that the Landlord has not provided sufficient evidence to support his claim and therefore I dismiss his Application without leave to reapply.

The Landlord's Application has been dismissed and therefore I Order that the Landlord return the security deposit and pet damage deposit to the Tenant within 15 days of receipt of this Decision. The Tenant is hereby provided with a Monetary Order for enforcement, if necessary.

Conclusion

The Landlord's Application is **dismissed without leave to reapply**.

I hereby provide the Tenant with a Monetary Order in the amount of **\$745.00** for service upon the Landlord, representing return of the security deposit and pet damage deposit. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: July 20, 2015

Residential Tenancy Branch

