



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MNDC, MND, FF
For the tenant: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act ("Act").

The landlord applied for authority to retain the tenant's security deposit, for a monetary order for money owed or compensation for damage or loss and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The tenant applied for a return of her security deposit, doubled, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

At the outset of the hearing, each party confirmed that they had received the other party's application. Although the landlord submitted documentary evidence with her application, the landlord submitted an additional 4 pages of evidence received by the Residential Tenancy Branch ("RTB") on December 3, 2014. The landlord confirmed that she had not served the tenant with this evidence, as required by the Dispute Resolution Rules of Procedure (Rules). I have therefore excluded and not considered this evidence for purposes of this Decision. I note that the additional documentary evidence ultimately had not impact on this Decision.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Rules; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?
2. Is the tenant entitled to a monetary order comprised of double her security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this month-to-month tenancy began on July 1, 2014, pursuant to the written tenancy agreement entered into evidence by the landlord, that the tenant vacated the rental unit on October 28, 2014, monthly rent was \$1100.00, and the tenant paid a security deposit of \$550.00 at the beginning of the tenancy, which has not been returned to the tenant.

The tenant submitted that she did not move into the rental unit until July 11, 2014.

Landlord's application-

The landlord's monetary claim is as follows:

Carpet cleaning	\$191.00
Cleaning	\$122.00
November rent	\$1100.00

The landlord provided the following oral evidence in support of her application, while referring to her documentary evidence.

The landlord submitted that the tenant provided insufficient notice that she was vacating the rental unit, as the notice was received on October 1, 2014, for an effective end of tenancy on October 31, 2014.

The landlord submitted further that in her attempt to minimize the loss for the tenant due to the insufficient notice, she attended the rental unit at the beginning of October to inspect and to ready the rental unit for potential tenants. When entering the rental unit, according to the landlord, she was disgusted and stunned at the condition. Due to the condition, the landlord hired a cleaning person to help clean the rental unit. Additionally, the landlord provided extra cleaning, according to the landlord. A statement from the cleaner was provided into evidence, showing a date of October 1, 2014.

The landlord submitted further that she hired a specific carpet cleaning company as required by the addendum to the tenancy agreement in order properly have the carpet cleaned. A receipt from the carpet cleaning company was provided by the landlord showing a cleaning date of October 23, 2014.

The landlord's additional relevant documentary evidence included, but was not limited to, a handwritten statement explaining her claim and outlining her monetary claim, and various email communications between the parties. In the email communication, there were what appeared to be additional terms to the tenancy agreement. The landlord also submitted photographs of the rental unit.

The landlord confirmed that there was no move-in or move-out condition inspection report.

Tenant's response-

The tenant submitted that she never agreed to the addendums as shown by the landlord in an email requiring a carpet cleaning by the specific company used by the landlord, and that the written tenancy agreement notes 1 additional page with addendums, as submitted by the tenant into evidence. The tenant submitted further that she has never seen the additional terms as mentioned by the landlord.

The tenant acknowledged that the landlord informed her that the carpet had to be cleaned, and that she sent the landlord an email stating that they would be clean. The tenant submitted that she would have her cleaner come back to the rental unit at 5:00; however, the landlord refused to allow the carpet cleaner clean.

The tenant submitted further that she provided her notice to vacate with her monthly rent on October 1, 2014, at 8:00 a.m. When she arrived home that night, she discovered that the landlord had entered her rental unit without sufficient notice and cleaned the home without notice to the tenant.

Tenant's application-

The tenant's monetary claim is as follows:

Carpet cleaning	\$50.00
Security deposit, doubled	\$1100.00
Loss of earnings	\$256.00
Ripped jacket	\$1500.00

The tenant provided the following oral evidence in support of her application, while referring to her documentary evidence.

The tenant submitted that she hired a carpet cleaner to clean the carpet, and although the landlord refused to allow the tenant's carpet cleaner to clean, there was still a service charge of \$50.00 for an unsuccessful trip to the rental unit.

As to the security deposit, the tenant submitted that she provided the landlord with her written forwarding address on October 28, 2014, via email attachment and in the landlord's mailbox. The tenant submitted further that she was entitled to a return of her security deposit and that the amount should be doubled as the landlord unlawfully retained the deposit.

As to the loss of earnings, the tenant stated that she has become aware since filing her application that this claim is not compensable under the Act, and did not pursue the claim at the hearing.

As to the ripped jacket, the tenant submitted that the landlord entered her rental unit at will during the tenancy, and that on one occasion, the expensive jacket she left on the back of the door was shoved into a closet.

The tenant submitted that her photographic evidence shows that she left the rental unit in pristine condition.

The tenant's additional relevant evidence included, but was not limited to a receipt by the carpet cleaner showing a service charge of \$50.00, email correspondence between the parties, photographs and digital evidence depicting the state of the rental unit during the month of October 2014, and an online advertisement of the landlord for the rental unit.

Landlord's response-

The landlord submitted that she would never touch the jacket and denied damaging the jacket.

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.

Landlord's application-

As to the landlord's claim against the tenant for carpet cleaning and cleaning, section 37(2)(a) of the Act requires that when a tenant vacates a rental unit, it must be left reasonably clean and undamaged, except for reasonable wear and tear.

This is not a requirement during the final month of the tenancy and thus when the landlord had the rental unit and carpet cleaned at the beginning of the last month, or

even during the last month of the tenancy, this was the landlord's choice, but not an obligation of the tenant. Additionally, as the landlord failed to provide a move-in and move-out condition inspection report, as is her obligation under sections 23 and 35 of the Act, I find she failed to prove the state of the rental unit at the beginning or the end of the tenancy. I also find that the tenant's photographic evidence shows that the rental unit was in clean condition during the last month of the tenancy.

I further find that there was no term in the tenancy agreement regarding a carpet clean by a specific company, as claimed by the landlord. The written tenancy agreement clearly shows 1 additional page with addendums, the entire document for which was submitted by the tenant, and the landlord's evidence shows that term in a lengthy email from the landlord, not attached to the written tenancy agreement.

Due to the above, I find the landlord submitted insufficient evidence to support her claim for carpet cleaning and cleaning and those claims are dismissed.

As to the landlord's claim for loss of rent revenue for the month of November 2014, due to the insufficient notice by the tenant by 1 day, I find the landlord submitted insufficient evidence to show that she took reasonable steps to minimize her loss. In reaching this conclusion, I took into consideration that the landlord failed to submit proof of her advertisements of the rental unit. Additionally, the tenant did submit a copy of the landlord's advertisement, which showed that the rental unit was available on July 1, not November, as would be the case here, adding confusion as to when the rental unit was actually available. Further the landlord increased the monthly rent sought for the rental unit by \$100.00 per month, and taking the evidence in totality, I find the landlord has not met her burden of proving her compliance with section 7(2) of the Act. The landlord's claim for loss of rent revenue for November 2014 is dismissed.

I decline to award the landlord recovery of her filing fee, due to her unsuccessful application.

Tenant's application-

Carpet cleaning service charge-

In reviewing the tenant's receipt evidence, I find that the landlord's actions caused a loss to the tenant when the tenant attempted to comply with her obligation under the Act to have the rental unit reasonably clean. I find the tenant incurred a service charge when the landlord refused to allow the tenant's carpet cleaner work on the carpet.

I therefore find the tenant submitted sufficient evidence to support her claim and grant her a monetary award of \$50.00.

Security deposit, doubled-

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. 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.

Additionally, when a landlord fails to properly complete a condition inspection report, as is the case here, the landlord's right to make a claim against the security deposit for damage to the property is extinguished under sections 24 and 36 of the Act.

In this case, the landlord's application claiming against the security deposit was filed on November 3, 2014, within 15 days of the end of the tenancy. Although the landlord's right to claim against the security deposit for damage to the rental unit was extinguished, the landlord's claim also included a claim for loss of rent revenue. As part of the landlord's claim was not for damage to the property but for loss of rent revenue, I find that the landlord complied with the requirement under section 38 to make an application to keep the deposit within 15 days of the end of the tenancy. The tenant is therefore not entitled to double recovery of the deposit, and I dismiss that portion of the tenant's application.

Although I find the tenant is not therefore entitled to double her security deposit, as I have dismissed the landlord's monetary claim against the tenant's security deposit, I find the tenant is entitled to a return of her security deposit of \$550.00.

Loss of earnings-

This claim was not pursued by the tenant at the hearing. It is therefore dismissed.

Ripped jacket-

In reviewing the tenant's evidence, I find it insufficient to prove that the landlord damaged the tenant's jacket or that she suffered a loss as the result of the landlord's actions. The claim for \$1500.00 is dismissed.

I also allow the tenant recovery of her filing fee of \$50.00 paid for this application, pursuant to section 72(1) of the Act.

Due to the above, I grant the tenant a monetary award of \$650.00, comprised of a carpet cleaning service charge of \$50.00, her security deposit of \$550.00, and for recovery of the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$650.00, which is enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served upon the landlord and 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 without leave to reapply.

The tenant's application for monetary compensation is granted in part as I have granted her a monetary order of \$650.00.

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: July 3, 2015

Residential Tenancy Branch

