



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order. The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant's agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 7, 2013 for a 1 year fixed term tenancy beginning on February 1, 2013 that converted to a month to month tenancy on February 1, 2014 for a monthly rent of \$1,650.00 due on the 1st of each month with a security deposit of \$825.00 and a pet damage deposit of \$825.00 paid;
- A copy of an additional agreement between the parties that bound the tenant to make repairs to the property if any modifications to the rental unit were made during the tenancy "to accommodate disabilities";
- A copy of a Condition Inspection Report recording a move in condition inspection on February 1, 2013 and a move out condition inspection on November 28, 2014; and
- 8 undated photographs showing detail of conditions in the rental unit after the end of the tenancy.

The landlord submits that the tenant had signed a secondary agreement agreeing to repair any damage caused by a wheelchair and hospital bed. The landlord submits that because of the use of these pieces of medical equipment the tenant had caused

damage to the walls, baseboards; rescreening of a patio door and trim and to the front door frame.

The landlord claims the following amounts for compensation: \$425.00 for repairs to walls, baseboards, and trim; \$100.00 to rescreen the patio door; and \$100.00 for repairs to the front door. The landlord's total claim is \$625.00 plus the filing fee of \$50.00. The landlord testified that these estimates are based on her experience in the role of property manager, but she did not provide any written estimates from anyone who would complete the work. Both parties agreed the landlord has returned \$975.00 in deposits but continues to hold \$675.00.

The tenant's agent submits that the secondary agreement was specific to returning any modifications made to the rental unit to original condition and that the items the landlord is claiming for is regular wear and tear.

The tenant's agent submits that while he did sign the section of the Condition Inspection Report agreeing to pay the landlord \$24.00 for a furnace filter and a battery for a smoke detector the document was altered after he signed it stating that the tenant agreed to pay the landlord \$675.00. The landlord's agent agreed she had altered the document but that she has since found a furnace filter and battery and has not claimed these items against the tenant.

The tenant also submits the photographs taken of the rental unit must have been taken after the new tenant moved in and as such may reflect damage caused by the new tenants when they moved into the unit. The landlord did not dispute this claim.

The landlord submitted copies of email correspondence between the parties discussing a possible settlement agreement. The parties did not reach a settlement on these matters.

Analysis

In regard to the parties' attempts to settle this claim prior to the hearing, I find that parties have a multitude of reasons for wanting to settle a claim that has been made against them. Not all of those reasons include admitting culpability. As such, I find the fact that the tenant may have made an offer of settlement in no way impacts the outcome of the landlord's claim before me.

To be successful in a claim for compensation for damage or loss the landlord still has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the landlord's own testimony she altered at least one section of the Condition Inspection Report. As such, I find the Condition Inspection Report cannot be relied upon as credible evidence of the condition of the rental unit at the end of the tenancy.

In addition, the landlord did not dispute the tenant's agent's assertion that the photographs were taken after the new tenants moved into the rental unit.

As such, I find the landlord has failed to provide any credible evidence at all of the condition of the rental unit. I therefore find the landlord has failed to establish that she has suffered a loss as a result of the tenancy for any of the items claim.

Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety and order the landlord return the balance of the deposits.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$675.00** comprised of the balance of the security deposit held.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 23, 2015

Residential Tenancy Branch

