



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MND, FF

Introduction

This hearing was convened as the result of the landlords' application for dispute resolution under the Residential Tenancy Act ("Act"). The landlords applied for authority to keep all or part of the tenant's security deposit, for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

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

At the beginning of the hearing, when discussing the other's evidence, the landlord denied receiving the 1 page of evidence submitted by the tenant. The tenant was allowed to read and testify about that document, which was their written response to the landlord's application. Additionally, the tenant submitted that the evidence of the landlords was too light to be able to read. Though not relevant, I note that my copy of the landlords' evidence was very light and hard to read as well.

Thereafter the participants were provided the opportunity to present their evidence orally, to refer to relevant 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

Are the landlords entitled to retain the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this tenancy began on December 1, 2014, ended on or about April 19, 2015, monthly rent was \$910.00, and the tenant paid a security deposit of \$455.00. The tenant submitted that they moved out of the rental unit on April 9, 2015.

The landlords submitted a monetary claim of \$559.25, comprised of damaged carpet of \$376.50, an estimated cost of \$141.15 for replacing a kitchen cabinet door and the filing fee of \$50.00.

The landlords' relevant evidence included a written tenancy agreement, a document entitled "Suite condition-check list", an invoice for work on the kitchen cabinet doors, dated January 21, 2015, an estimate for removing an "old damaged door", and a contract for carpet repair. The landlord also submitted a black and white copied photograph, which was too blurred to be of any value, as I could not determine what was in the photograph.

In support of their application, the landlord submitted that the tenant damaged the carpet with spilled tea, and therefore the carpet required repair at the end of the tenancy. The landlord stated that the carpet was new at the beginning of the tenancy.

As to the kitchen cabinet repair, the landlord stated that she believed the steam from the tenant's cooking and tea making caused damage to the kitchen cabinet.

Tenant's response-

The tenant submitted the carpet was stained when she moved in and denied having a steam tea maker. The tenant submitted further that she used the rental unit mostly for sleeping, and estimated that she did not cook more than 4 times during the tenancy.

The tenant submitted that she returned the unpaid rent in a completely clean state, and that the landlord just told her to sign the check list, so that she would be returned her security deposit.

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 that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Under sections 23(3) and 35(3) of the Act, a landlord must complete a condition inspection report in accordance with the regulations. Among other things, section 20 of the Residential Tenancy Regulation requires that the condition inspection report contain:

- *the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;*
- *the address of the rental unit being inspected;*
- *the date on which the tenant is entitled to possession of the rental unit;*
- *the address for service of the landlord;*
- *the date of the condition inspection;*
- *a statement of the state of repair and general condition of each room in the rental unit.*

Additionally, the inspection report must contain other required information, such as

- *a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;*
- *any other items which the landlord and tenant agree should be included;*

- *a statement identifying any damage or items in need of maintenance or repair;*
- *appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;*
- *the following statement, to be completed by the tenant:*
- *I,
Tenant's name*

[] agree that this report fairly represents the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....
.....
.....

In reviewing the evidence of the landlord, I found I could not rely upon the 1 page check list as proof of any damage by the tenant, as the check list failed to comply with the requirements of the Act and the regulations as to the information required.

For instance, the check list was just that, as there were only checks under the In and Out columns, with no indication as to what the checks denoted. Additionally, there was no space for the tenant to sign their agreement or disagreement with the contents of the report, and the handwritten comments, most likely those of the landlord, were on the located down the left hand side of the entire report, so that I could not determine under what category the comments were referring. It was apparent from my reading that the tenant was not allowed to write comments on the document.

Further, there was no general statement of the repair or general condition of the fixtures, flooring, windows, or other items in the rental unit at the beginning of the tenancy.

Overall, I found the check list to be wholly deficient for purposes of the landlords' compliance with their requirements under the Act for a condition inspection report in order to establish the condition of the rental unit and I therefore could not rely on the check list to establish that the tenant had committed any damage to the rental unit, as claimed by the landlord.

I also find that landlord failed to submit independent proof of the state of the carpet at the beginning of the tenancy and of the kitchen cabinets at the end of the tenancy and

therefore, I find the landlords submitted insufficient evidence to support their claim for damages to the rental unit committed by the tenant.

I therefore dismiss the landlords' application, including their request to recover the filing fee, without leave to reapply.

As I have dismissed the landlords' claim against the tenant's security deposit, I order the landlords to return the tenant's security deposit, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of their security deposit of \$455.00, which is enclosed with the tenant's Decision.

Should the landlords fail to pay the tenant this amount without delay, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords' application is dismissed, without leave to reapply.

The landlords are ordered to return the tenant's security deposit, immediately, and the tenant is granted a monetary order in the amount of their security deposit of \$455.00 in the event the landlords do not comply with this order.

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: October 26, 2015

Residential Tenancy Branch

