



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, 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 money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation and for alleged to the rental unit, and for recovery of the filing fee paid for this application.

The tenant applied for a return of his security deposit and for recovery of the filing fee paid for this application.

The landlord's agent and the tenant attended the hearing. The landlord's agent was questioned about her role and authority in this matter in order to ascertain whether she had enough information to fully represent the landlord's interest. The landlord's agent submitted that she knew the details of the landlord's application, as she had his notes, and that she was the daughter-in-law of the landlord. I accepted the landlord's agent as the authorized agent of the landlord.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, neither party raised any concerns or issues regarding service of the applications or the other's evidence, other than the landlord's evidence received by the Residential Tenancy Branch ("RTB") on October 15, 2015, which the landlord's agent confirmed was not sent to the tenant. As the landlord failed to comply with the Dispute Resolution Rules of Procedure ("Rules") by sending their evidence to the respondent/tenant, I have excluded this evidence from consideration.

Thereafter the participants were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed the oral, written, and photographic 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 his security deposit and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on July 5, 2011, ended on May 1, 2015, monthly rent began at \$595.00, ended at \$610.00, and the tenant paid a security deposit of \$300.00 at the beginning of the tenancy, in excess of the allowed amount under the Act, in this case $\frac{1}{2}$ of the monthly rent, or \$297.50. The landlord has not returned the tenant's security deposit, having filed an application claiming against the security deposit.

Into evidence, the landlord submitted a document which appeared to contain both an application for tenancy and the tenancy details.

Landlord's application-

The landlord's listed monetary claim is comprised of \$200 for washing and painting the walls, broken light and light bulbs for \$28.46, photos for \$10.92, cleaning for \$145.00, light bulbs for \$6.00, new carpet replacement for \$120.45, and rent for the month of May 2015.

The landlord's agent and the tenant provided the following testimony and evidence in support of and in response to, the landlord's application, as follows:

Washing and painting walls-The landlord's agent submitted that the walls were dirty and stained from cigarette smoke at the end of the tenancy, which required a washing and painting, causing the landlord to hire a painter to remediate the walls.

The landlord's agent confirmed that the landlord washes and paints the walls between each tenancy. The landlord's agent also referred to the photographs provided in evidence, which she confirmed was taken by the landlord a few days after the tenancy ended.

In response, the tenant submitted that he was not a smoker, drinker or consumer of drugs at all, that the walls were not dirty, and did not require painting. Additionally, the tenant submitted that he had wanted to make his own notations about the rental unit at the inspection; however, the landlord refused to let him write anything on the report.

Additionally, the tenant submitted that he thoroughly cleaned the rental unit and did not leave a crumb behind.

Broken light and light bulbs-The landlord's agent submitted that there was a broken kitchen light for which the tenant was responsible and for 2 light bulbs.

In response, the tenant submitted that there was never a light fixture in the kitchen and therefore, he did not break the alleged light fixture.

Cleaning-The landlord's agent submitted that the building manager had to wash and clean the drapes after the tenancy ended and that the landlord's spouse had to clean the rental unit due to the condition of the rental unit as left by the tenant at the end of the tenancy.

In response, the tenant submitted that he thoroughly washed and cleaned the stove, and denied that the stove in the landlord's photographs was the stove he used. The tenant affirmed that he thoroughly cleaned the rental unit and that the drapes were old and dirty with blood stains to start the tenancy.

The tenant reaffirmed that the landlord would not let him record comments on the inspection report.

Light bulbs-The landlord's agent submitted that the landlord had to replace more light bulbs at the end of this tenancy.

The tenant denied leaving burnt out bulbs.

New carpet replacement-The landlord's agent submitted that the tenant failed to clean the carpet and there was a burn in the carpet left by the tenant. The landlord generally asks the tenants to provide for carpets, according to the landlord's agent. The landlord's agent also referred to the landlord's photographic evidence.

In response, the tenant submitted that the carpet was stained, soiled and burned at the start of the tenancy and had feces.

Rent for the month of May 2015-The landlord's agent submitted that the landlord was entitled to receive a loss of rent revenue for this month, as the tenant was to leave by noon on May 1, 2015, and instead did not vacate until 2 or 3 hours later. As the tenant left 2-3 hours late, the landlord did not have time to prepare the suite, according to the landlord's agent.

The landlord's agent confirmed that there was no advertising for a new tenant for May, as the landlord required the entire month of May to prepare the suite.

The tenancy agreement confirmed she was not present at the move-in or move-out inspection.

In response, the tenant submitted that he vacated the rental unit by 11:30 a.m. on May 1, as the moving truck had to be returned by 1:00 p.m.

The landlord's additional relevant evidence included, but was not limited to, a 1 page inspection report, some handwritten notes with another breakdown of the claim, an invoice from a carpet cleaning company, a company cheque to the landlord's spouse, a company cheque to the building manager, and a home improvement store receipt.

Tenant's application-

The tenant's monetary claim is in the amount of \$300.00, comprised of his security deposit. The tenant is also requesting recovery of the filing fee paid for this application in the amount of \$50.00.

The tenant submitted that he provided the landlord with his written forwarding address on a piece of paper at the end of the tenancy, in person to the landlord, and the landlord has not returned his security deposit.

Analysis

Landlord's application-

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.

In looking at the landlord's claim, all related to the state of the rental unit at the end of the tenancy for which the landlord claims the tenant is responsible, I first reviewed the inspection report provided by the landlord.

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:

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.....

In reviewing the evidence of the landlord, I found I could not rely upon the 1 page inspection report of any damage by the tenant, as I find the report failed to comply with the requirements of the Act and the regulations as to the information required as noted above. I also found the landlord, in that inspection report, required tenants to leave a rental unit in the same condition as upon the commencement of the tenancy, a requirement not allowed under section 37 of the Act.

For instance, the inspection report contained only check marks for the move-in section and no room for comments by the tenant. Additionally, there was no space for the tenant to sign his agreement or disagreement with the contents of the report. 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 inspection report to be wholly deficient for purposes of the landlord's compliance with his 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 inspection report to establish that the tenant had committed any damage to the rental unit, as claimed by the landlord.

In addition to the deficient inspection report, the landlord's agent was not present at the inspection, and I find she therefore was unable to authenticate the inspection report or provide her first hand testimony of the state of the rental unit and the tenant, who did attend the move-out inspection, therefore supplied undisputed evidence that the rental unit did not require cleaning or was damaged.

I therefore found that the landlord failed to supply sufficient proof of the condition of the rental unit at the end of the tenancy due to the deficient condition inspection report and lack of other evidence or direct testimony, and I therefore dismiss the landlord's claim for losses related to the state of the rental unit, or more specifically for washing and painting the walls, broken light and light bulbs, cleaning, light bulbs, new carpet replacement, and rent for the month of May 2015.

As to the loss of rent revenue for May 2015, I further specifically find that the landlord provided insufficient evidence that the tenant's delay of 2-3 hours in moving out on May 1, 2015, even if true, which I do not accept, caused the landlord this loss. For instance, the landlord failed to show that they had new tenants ready to move in, but for the delay of 2-3 hours. The landlord's agent also confirmed that the landlord failed to take reasonable steps to minimize their loss by advertising the rental unit for the month of May.

As to the landlord's claim for photo costs, the Act does not allow for expenses related to an applicant's costs in prosecuting their claim, other than for the filing fee. I therefore dismiss the landlord's claim for photo costs.

Due to the above, I therefore dismiss the landlord's application, including their request to recover the filing fee, without leave to reapply.

Tenant's application-

As I have dismissed the landlord's application claiming against the tenant's security deposit, I order the landlord to return the tenant's security deposit of \$300.00 immediately.

As I grant the tenant's application, I also award him recovery of his filing fee of \$50.00.

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 his security deposit of \$300.00 and his filing fee of \$50.00, or a total of \$350.00, which is enclosed with the tenant's Decision.

Should the landlord 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 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 landlord is ordered to return the tenant's security deposit, immediately.

The tenant's application was granted and the tenant is granted a monetary order in the amount \$350.00, comprised of his security deposit of \$300.00 and the filing fee of \$50.00 in the event the landlord does 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: November 1, 2015

Residential Tenancy Branch

