



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANDY DEVELOPMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF (Landlord's Application)
 MNSD, MNDC, FF (Tenant's Application)

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution the Landlord requested authority to retain the security deposit and to recover the filing fee. In the Tenant's Application for Dispute Resolution she sought a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, *Residential Tenancy Regulation*, or the tenancy agreement; return of her security deposit and to recover the filing fee.

Both parties appeared at the hearing. The Landlord was represented by S.W., the Property Manager, and T.T., the Property Administrator; for the purposes of this my Decision I will refer to the Landlord's representatives as the "Landlord". The Tenant appeared on her own behalf. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to retain the security deposit?
2. Is the Tenant entitled to monetary compensation from the Landlord?

3. Should either party recover the fee paid to file their applications?

Background and Evidence

S.W. testified on behalf of the Landlord. Introduced in evidence was a copy of the residential tenancy agreement signed April 14, 2014. Based on S.W.'s testimony and the information contained in the tenancy agreement the terms of the tenancy were as follows: the tenancy began on June 1, 2014; monthly rent was payable in the amount of \$675.00; and the Tenant paid a security deposit of \$337.50.

S.W. stated that the Landlord did not perform a move in condition inspection report as the building was "brand new" and they did not believe it was necessary. S.W. conceded at the hearing that she was now aware that the report was necessary and stated "now we learned a lesson".

S.W. testified that the tenancy ended on May 31, 2015. She testified that the Tenant wanted to do the inspection on the last day of the tenancy: May 31, 2015, but the Landlord was not available. She further stated that she then tried to conduct a move out condition inspection report on June 1, 2015 but the Tenant didn't "get back to her". S.W. testified that eventually a move out condition inspection was not completed because the Tenant was "not available".

S.W. stated that the rental unit was rented out again on June 15, 2015. She testified that it was not immediately re-rented as "it took time to pick a tenant as well"; she stated that it was for that reason she only sought compensation for seven days of missed rent rather than the 15 it took to re-rent the rental unit.

Introduced in evidence by the Landlord was a Monetary Order Worksheet wherein the Landlord requested compensation in the amount of \$315.00 for the following:

Loss of rent for June 1-7, 2015	\$157.50
cleaning	\$157.50
Filing fee	\$50.00
Total claimed	\$365.00

The Landlord submitted photos in evidence of the rental unit in support of their claim that the rental unit was left unclean. The Landlord testified that they gave the Tenant the opportunity to clean the rental unit on June 1, 2015, and when the Tenant refused,

the Landlord hired someone to clean. Introduced in evidence was a copy of the cleaning receipt.

The Tenant testified that she paid \$367.50 for her security deposit in addition to \$50.00 for two key fob deposits for a total of \$417.50 paid. She stated that she sought recovery of double these amounts pursuant to section 38 of the *Act* as the Landlord failed to conduct a move in and move out condition inspection.

The Tenant also testified that she spent countless hours cleaning the rental unit. She stated that she asked to meet with the Landlord on the last day of her tenancy, May 31, 2015, which was a Saturday, to ensure the rental unit was cleaned to their expectations and so that she would have enough time to take care of any further cleaning they required. The Tenant stated that the Landlord refused to meet her on the last day of her tenancy and insisted that she attend on Monday which was not possible for her due to her work commitments. The Tenant stated that the Landlord called her and accused her of not cleaning at all, and offered the Tenant an opportunity to come and finish cleaning to the Landlord's expectation, but according to the Tenant, the then Landlord "immediately retracted their offer to allow [her] to clean".

The Tenant admitted that there were a few crumbs in the fridge, but claimed that she did wipe and clean it. She also stated that she didn't remove the stove burner as she was afraid to do so as she had never removed burners before and was not instructed on how to do so. She further testified that she left the cable TV boxes as she did not realize it was her responsibility to return them as she believed they came with the rental unit. Further, she testified that she left the windows open to "air out" the rental suite and that any dust or dirt which is depicted in the Landlord's photos, must have come in through these open windows as the dust and dirt was not there when she moved out.

In terms of the Landlord's claim with respect to the outdoor balcony, the Tenant responded that it was in the same condition when she moved in.

The Tenant opposed the Landlord's request for compensation for loss of rent for 7 days as she submitted that the Landlord did not advertise or market the rental unit adequately, and did not in fact start showing it until the tenancy ended.

In brief reply the Landlord testified that she did not begin advertising the rental unit until after the tenancy ended as she "had to wait to take photos" as it was their policy to wait until a tenant moves out to take photos of the rental unit before advertising to others.

The Landlord did not dispute the Tenant's claim that the balcony was in the same condition at the end of the tenancy as at the beginning.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenant had agreed, in writing, that the Landlord could retain any portion of the security deposit, plus interest.

By failing to perform incoming condition inspection report the Landlord has extinguished their right to claim against the security deposit, pursuant to sections 24(2) of the Act.

The security deposit is held in trust for the Tenant by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an Order from an Arbitrator. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit or interest.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the security deposit. The legislation does not provide any flexibility on this issue. The Tenant is therefore entitled to the sum of \$785.00 representing double the security deposit paid in the amount of \$367.50 and double the deposit paid for the key fobs in the amount of \$50.00.

The Landlord requested compensation for cleaning and lost rent revenue.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

Upon review of the photos submitted by the Landlord, I find that the rental unit was left clean to a reasonable standard. Photos #1-10; 13-14; 29-31; and 33-36; depict the rental unit floors and show minimal dust and reasonably clean floors. I accept the Tenant's testimony in this regard and find it likely that the open windows contributed to this dust, particularly the dead insect depicted in photo #14.

The photo of the outdoor balcony depicts mildew buildup which the Tenant alleges existed at the start of the tenancy. As no move in condition inspection report was completed, I only have this undisputed evidence of the Tenant as to the condition of the balcony flooring.

Photos #17 and 18 depict debris and food under the stove elements. Removal of these elements for cleaning is a simple task which could have been completed had the Tenant sought assistance from others, or instruction on the internet. I do not accept her suggestion that the Landlord should have instructed her on how to do so. However, I find that cleaning these elements would have taken minimal time for the Landlord's cleaners.

The photos submitted by the Landlord of the fridge, 22-25 also show minimal debris.

Photo #32 shows the baseboards had not been wiped by the Tenant at the end of the tenancy.

Photo #38 depicts debris inside the window tracts.

Residential Tenancy Policy Guideline Landlord & Tenant 1– Responsibility for Residential Premises provides that the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit. This guideline also mandates that a tenant must:

- clean the stove top, elements and oven, defrost and clean the refrigerator, wipe out the inside of the dishwasher;

- wipe the baseboards; and,
- clean the inside windows and tracks including removing mould.

I am persuaded by the Landlord's photos that some minimal cleaning was required. Introduced in evidence by the Landlord was a receipt dated January 30, 2014 in which \$120.00 is noted as cleaning for a "one bed rm suite" (the Landlord has highlighted this presumably to indicate this one bed room suite is the rental unit). The hourly rate charged by the cleaning company is \$20.00. I do not accept that the condition of the rental was such that six hours of cleaning as required. Rather, I find, based on the photos submitted, that the Landlord is entitled to compensation for two hours of cleaning and therefore award them **\$42.00** representing two hours of cleaning at \$20.00 an hour and \$2.00 in GST.

I find that the Landlord, in failing to advertise the rental unit immediately upon receiving notice from the Tenant, failed to mitigate or minimize any potential lost rent. I find her policy of waiting until a rental unit is vacated to take photos and advertise to be unreasonable. Accordingly, I decline her request for a loss of rent for 7 days.

As the Tenant was substantially successful, I award her recovery of her filing fee. As such, the Tenant is entitled to a total of **\$835.00**. This amount is offset by the **\$42.00** awarded to the Landlord such that the Tenant is entitled to receive the sum of **\$793.00** and is granted a Monetary Order for this amount. Should the Landlord fail to pay, the Tenant may file this Monetary Order in the B.C. Provincial Court (Small Claims Division) and enforce the Order as an Order of that Court.

Conclusion

The Landlord in failing to conduct an incoming condition inspection report extinguished her right to claim against the security deposit and key fob deposit. The Tenant is entitled to recovery of double the amounts paid pursuant to section 38.

The Landlord is entitled to compensation for the cost of two hours of cleaning of the rental unit.

The Landlord's claim for lost rent for 7 days is dismissed as the Landlord failed to minimize their loss by advertising once they received the Tenant's notice to end the tenancy.

The Tenant is also entitled to recover the filing fee.

The amounts awarded to each party are offset against the other such that the Tenant is entitled to a Monetary Order in the amount of **\$793.00**.

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: December 14, 2015

Residential Tenancy Branch

