



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction and Preliminary Matters

This was the reconvened hearing dealing with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord 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 for recovery of the filing fee paid for this application.

This hearing began on October 22, 2015, and dealt only with evidence matters, as the landlord claimed not to have received the tenant's photographs, although the tenant submitted that she had sent the photographs with her documentary evidence by registered mail, which the landlord had collected. During the period of adjournment, the tenant submitted evidence that the landlord collected the first parcel of evidence as well as evidence that the landlord collected the evidence the second time she sent the evidence. In the hearing, the landlord claimed that he had not received the tenant's evidence. As I informed the parties, I accept that the tenant has complied with her requirements in sending evidence to the applicant/landlord, due to the proof supplied, and the hearing proceeded with the inclusion of all evidence submitted by the parties.

An Interim Decision, which was entered on October 22, 2015, should be read in conjunction with this Decision and further, it is incorporated by reference herein.

The parties were informed at the original hearing that the hearing would be adjourned and reconvened in order to consider the landlord's application.

At this hearing, both participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all 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.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on June 1, 2013, monthly rent began at \$815.00, and the tenant paid a security deposit of \$407.50. I heard undisputed evidence that the tenancy ended on April 30, 2015.

In support of his application, the landlord submitted that the tenant left the rental unit in a dirty and unclean state, leaving a lot of her personal property on the balcony, in addition to a failure to clean the refrigerator, stove, and windows.

The landlord submitted that the tenant had a cat in the rental unit, without permission or authority, and that the cat damaged the carpet.

In response to my question, the landlord at first did not answer the question as to the age of the carpet, but finally he said the carpet was 30 months old.

The landlord's relevant evidence, which did not accompany his application, but rather two weeks prior to the hearing included, but was not limited to, a condition inspection report and a receipt for a new carpet, dated October 2, 2015.

Tenant's response-

The tenant submitted that she vacated the rental unit on April 15, 2015, and spent a week cleaning and used the carpet cleaner recommended by the landlord. The tenant disputed the age of the carpet, stating it was in poor condition and much older than stated by the landlord.

The tenant submitted that a final inspection of the rental unit did not occur, as the landlord proceeded to yell at and intimidate her during the inspection.

The tenant submitted that the landlord altered the condition inspection report after she signed it, as she would never sign a document showing damage and cleaning required. Into evidence, the tenant submitted a copy of the condition inspection report, on RTB form 27, she received at the move-in date, which showed no remarks at all until the last page and a copy of the landlord's condition inspection report, which shows a significant number of markings on both the move-in and move-out portions of the report.

The tenant submitted further that the landlord additionally altered the tenancy agreement after the parties signed the document, noting the discrepancy in the centering of the print, and that the landlord used "white out" on her copy of a cleaning list by a company she was unable to find after searching.

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.

In the case before me, I find the landlord failed to convince me that the condition inspection report he presented was authentic. I do not accept that the tenant, who presented convincing and compelling evidence that she thoroughly cleaned the rental unit, would sign such a document as submitted by the landlord.

After a review of all the evidence, I remained unconvinced that the landlord did not alter the condition inspection report after the tenant had signed the document.

Additionally, the document presented by the landlord to prove cleaning, only listed items of charges. I do not find that the document was an invoice, and I was drawn to the fact that this company's name contained the first 3 letters of the landlord's surname, which made me further question the authenticity of the document. I was unconvinced that the landlord's incurred a loss for cleaning.

As to the receipt for a carpet replacement, the document shows that the carpet was replaced months after the tenancy ended. I therefore find the landlord is unable to substantiate that the carpet required replacement at the end of this tenancy.

I also considered that the landlord failed to provide photographic proof of his claim of the state of the rental unit at the end of the tenancy.

For the reasons set out above, I find the landlord has submitted insufficient evidence to support that the tenant damaged the rental unit or left the rental unit in an unclean state.

I therefore dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's claim against the tenant's security deposit, I order the landlord 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 \$407.50, 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, and the tenant is granted a monetary order in the amount of her security deposit of \$407.50 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: December 24, 2015

Residential Tenancy Branch

