



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, 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 (the "Act").

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for alleged damage 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 pet damage deposit and for recovery of the filing fee paid for this application.

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

Preliminary matter-

At the outset of the hearing, the evidence was discussed and the landlord confirmed that she had not sent her additional documentary evidence, received by the Residential Tenancy Branch ("RTB") on December 29, 2015, to the tenant. This additional evidence contained copies of photographs and receipts for costs. As the landlord failed to comply with the Rules in serving the other the party, the tenant, with her evidence, I

have excluded this evidence from consideration. The landlord confirmed receipt of the tenant's evidence.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit and pet damage deposit, to further monetary compensation, and for recovery of the filing fee paid for this application?
2. Is the tenant entitled to a monetary order comprised of his security deposit and pet damage deposit and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on January 15, 2014, ended on July 1, 2015, monthly rent was \$1250.00, and the tenant paid a security deposit of \$625.00 and a pet damage deposit of \$200.00 at the beginning of the tenancy. The landlord has retained both deposits.

The parties agreed that there is no move-in or move-out condition inspection report.

Landlord's application-

The landlord's monetary claim listed in her application is an estimated cost of \$1008.00 for alleged damage by the tenant to the rental unit, for painting costs of \$415.00, repair of a hole cut in the garage ceiling for \$100.00, rubbish removal for \$85.00, cleaning for \$160.00, garage door opener repair, blind replacement, and bedroom door replacement.

The parties submitted the following evidence in support of, and in response to, the landlord's application-

Painting costs-

The landlord submitted that there were holes and patch job in the walls, which required that the landlord hire someone to paint and repair the walls.

In response, the tenant submitted that there was no need for a paint job after he vacated and there were markings on the walls at the beginning of the tenancy which were never painted over.

Hole in the garage ceiling-

The landlord submitted when she inspected the premises, she noted that there was a hole cut in the ceiling in the garage, for which the tenant should be responsible.

In response, the tenant submitted he did not cut a hole in the ceiling and that the hole was in place when he moved into the rental unit.

Rubbish removal-

The landlord submitted the tenant left rubbish which was required to be removed, at her expense.

In response, the tenant submitted that the rubbish was there when he moved in, as it was garden waste and near a wooded area.

Cleaning-

The landlord submitted that the tenant failed to clean the rental unit, which required that she incur a cost to clean.

In response, the landlord submitted he hired someone to clean the rental unit and he would never leave the premises without cleaning. The tenant submitted further that the rental unit is 25-30 years old and is in poor condition.

Garage door opener repair-

The landlord submitted that a piece of the garage door opener snapped off, which required a repair. The landlord stated that she had no idea if the tenant misused the door opener.

In response, the tenant submitted that a clip on the door opener did break, from normal use.

Blind replacement-

The landlord submitted that the tenant damaged a blind in the rental unit, for which he should be responsible.

In response, the tenant submitted all the blinds in the rental unit had kinks in them.

Door replacement-

The landlord submitted that she was required to replace a bedroom door after the tenancy ended, the costs for which should be the tenant's responsibility.

In response to my question, the landlord stated the door was about 25 years old.

In response, the tenant submitted that he did not recall the door having to be replaced.

The landlord's additional relevant documentary evidence included a statement from a realtor about the condition of the rental unit.

Tenants' application-

The tenant's monetary claim is in the amount of \$825.00, comprised of his security deposit of \$625.00, and his pet damage deposit of \$200.00, in addition to recovery of the filing fee paid for this application.

The tenant submitted that he provided the landlord with his written forwarding address in mid July 2015, in an email.

Landlord's response-

The landlord confirmed receipt of the tenant's address by email.

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. In this case, the landlord has the burden of proof to substantiate her 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.

As to the landlord's claims against the tenant for damage to rental unit, I find a critical component in establishing a claim for damage, and the resulting expenses, is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me, I find the landlord failed in her obligation under of the Act of conducting an inspection of the rental unit and completing the inspection reports at the beginning and the end of the tenancy.

I therefore could not assess the condition at the end of the tenancy compared with the beginning of the tenancy. Consequently, I could not determine whether any alleged damage by the tenant was above and beyond reasonable wear and tear, or if there was any damage or repairs needed at all caused by the tenants.

Due to the above, I find the landlord submitted insufficient evidence to support her monetary claim against the tenant for damage and repair expenses to the rental unit.

I therefore dismiss the landlord's application claiming for costs of damages to the rental unit, without leave to reapply.

Tenant's application-

As I have dismissed the landlord's application claiming against the tenant's security deposit and pet damage deposit, I grant the tenant's application and order the landlord to return the tenant's security deposit of \$625.00 and his pet damage deposit of \$200.00, or \$825.00 in total, immediately.

I also grant the tenant recovery of the filing fee paid for his application 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 \$875.00, comprised of his security deposit of \$625.00, the pet damage deposit of \$200.00, and the filing fee of \$50.00, 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.

The tenant's application is granted and he has been awarded a monetary order of \$875.00.

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: January 11, 2016

Residential Tenancy Branch

