



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein he sought the following relief:

1. a Monetary Order for damage to the rental unit;
2. a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
3. for authority to retain the security deposit; and,
4. to recover the filing fee.

Both parties appeared at the hearing. 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 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.

Caution

The Landlord was cautioned on numerous occasions to be respectful in his communication. Despite my repeated requests, he continued to make inflammatory comments. Some of those comments are reproduced in this my Decision.

September 17 Hearing

The parties attended a hearing on September 17, 2015 which convened as a result of a Tenant's Application for Dispute Resolution wherein she sought recovery of her \$415.00

security deposit as well as an Order restricting the Landlord's right of entry. By an amendment dated July 17, 2015 she also sought return of all rent paid.

As the Tenant had yet to provide the Landlord with her forwarding address, the presiding Arbitrator found her application for return of her security deposit to be premature. The balance of the relief sought by the Tenant was dismissed with leave to reapply.

At the within hearing the Tenant confirmed she had not reapplied.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen to the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the tenancy began April 1, 2015. He stated that the rental unit is a one bedroom plus den ground level suite in his home. Monthly rent was payable in the amount of \$830.00 and the Tenant paid a security deposit of \$415.00 at the start of the tenancy.

The Landlord testified that the tenancy ended on July 31, 2015. He stated that Tenant "up and left" and failed to participate in the move out condition inspection. He further stated that the Tenant gave proper notice to end the tenancy, but did not tell the Landlord exactly when she was leaving and as such he was not able to perform a move out condition inspection.

The Landlord claimed \$415.00 for loss of one half month's rental revenue for August 2015; he claimed that the Tenant prevented him from showing the suite and therefore renting it out. He stated that he had someone to rent the unit right away, but then decided that person wasn't "acceptable" and even though he lost a full month of rent, he simply wanted to "be nice" and only claimed half a month. He further stated that he sought advice from the police who advised him to simply "stay away" from the Tenant.

The Landlord further stated that the condition in which the rental unit was left by the Tenant was such that it required cleaning and repairs. In support of his monetary claim he provided 12 photos of the rental unit which were reduced in size to fit on one sheet of paper.

The Landlord stated that the bedroom carpet was stained with coffee and claimed to have spent three hours cleaning; he sought \$90.00 in compensation claiming a rate of \$30.00 per hour.

The Landlord also claimed \$22.00 in cleaning supplies. When I asked the Landlord if he had a receipt for cleaning supplies, he stated that he did not purchase any new cleaning supplies,

rather that he simply used what he had available. He then suddenly raised his voice and became very agitated and stated "it's not like it is \$2,000.00. I could have hired a cleaning service but I did it myself." He also stated "this is not like a criminal trial; this is not a murder trial".

The Landlord also claimed the cost of replacing a shower curtain and shower curtain rings; he stated that it is his practice to provide shower curtains and rings with the rental unit and the Tenant removed both when leaving. Introduced in evidence was a copy of the receipt for replacing the shower curtain and rings in the amount of \$41.97.

The Landlord further testified that he repaired holes in the walls in the closet made by the Tenant and which he claimed took him approximately an hour; for this he claimed a further \$30.00.

At the conclusion of the Landlord's evidence, I asked him if he had performed a move in condition inspection report. In response, the Landlord again raised his voice and became very argumentative, and accused me of being "biased". He then stated that he has been in this business (which he then immediately stated "was not a business, just me renting out my in-law suite") for many years, as well as renting out properties for his father, and that in all that time he has never had any help from the tenancy branch. He then repeatedly stated that I was not being nice to him as well as "pro-tenant". The Landlord then said that he was 70 years old, was "tired of all of this" and that he had no interest in listening to me or to anything the Tenant had to say. He then stated he was leaving the call and became silent and refused to respond when I tried to ascertain if he was still on the line. When I suggested to the Tenant that he may have left the line, he then responded. I am satisfied that he remained on the call throughout its duration, despite his refusal to respond to me for a period of time.

The Tenant disputed the Landlord's claim for lost rent. She testified that she gave him proper notice to end the tenancy and facilitated his attempts to re-rent the unit. She also said that the Landlord brought a number of people through her unit when she wasn't there as she tried to be away when he was showing it. She further denied acting in any way that would prevent the Landlord from renting the rental unit in August of 2015. , She conceded however that there was one time when she was on her way out when the prospective tenants and the Landlord arrived. She said that as she was leaving a prospective tenant asked if he was a good Landlord to which she responded "I am sorry, I can't answer that".

The Tenant testified that the Landlord did not perform a move in or move out condition inspection.

The Tenant disputed the Landlord's claim for compensation for cleaning of the rental unit. She testified that she thoroughly cleaned the rental unit and that she left it in better condition at the end of the tenancy than when she moved in. She further stated that the photos submitted by the Landlord in the within hearing were in fact the photos she submitted for the September 17, 2015

hearing of her application and show the rental unit as being clean at the end of the tenancy, not damaged or dirty as claimed by the Landlord.

The Tenant testified that she did not have the carpets cleaned when she moved out as the tenancy was very short and she did not cause any staining or damage. She stated that the carpets were very stained when she moved in, and she tried her best to clean them, but could not budge the one stain in the bedroom which she claimed was there when she moved in.

The Tenant stated that she removed the shower curtain and rings as the shower curtain was ripped and not usable. She said that she believed the Landlord left up after the tenancy before her as he simply did not bother to remove it when she moved in. She stated that she disposed of the shower curtain in the garbage and left the shower curtain rings in a plastic bag in the bathroom.

The Tenant confirmed that she put two hooks in the inside of the closet, as she felt they were helpful for hanging items and she thought it would be a good idea to leave them there for the next tenants. She disputed that it would take an hour to remove them and repair the wall as claimed by the Landlord and stated she would have done so had she believed he wanted them removed.

The Tenant testified that she did not initially give the Landlord her forwarding address as she was frightened of him. She stated that, during the hearing, when she was informed that her application was premature at the hearing on September 17, 2015, she gave the Landlord her forwarding address. She then stated that the presiding Arbitrator told her that she would also have to send it in writing at which time she sent the address to him by email.

The Tenant submitted letters from various people attesting to her character as well as allegations about the Landlord's character. I find these letters to be irrelevant to the monetary issues before me.

The Tenant also submitted email correspondence between the parties with respect to her security deposit. In an email sent by the Landlord to the Tenant dated August 13, 2015 (and in response to her request for return of her deposit) he writes as follows:

"...

I want to point out that you did not ask me to do a condition inspection with you when you left the suite.

...

As you have filed a claim, which I must answer to, I will be happy to return your damage deposit, less the \$185.00, after the arbitrator has heard what I have to say on the matter and they have arrived at a settlement. At that time, you may provide an address where any money owing to you may be sent. In view of your past and present behaviour I wish

no further contact with you whatsoever and you are forbidden to come on to my property, phone me or send me any more E-mails.

...”

In reply the Landlord testified that the Tenant did not provide him with her forwarding address in writing and pursuant to the September 17, 2015 decision he was not obligated to deal with the security deposit until she did.

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.

I accept the Tenant's evidence that she provided the Landlord with her forwarding address at the September 17, 2015 hearing as well as sending it to him via email after the hearing. It is notable that the Landlord applied for dispute resolution on September 21, 2015 and noted the Tenant's address as the forwarding address she provided to him; I find this as evidence that he had her forwarding address as of September 21, 2015. I do not accept his evidence that she did not provide it to him at that time.

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, or the written agreement by the Tenant. Here the Landlord did not have any authority under the *Act* to keep any portion of the security deposit.

I accept the Tenant's evidence that the Landlord failed to perform a move in condition inspection. By failing to perform the incoming condition inspection report the Landlord extinguished his right to claim against the security deposit for damages, pursuant to sections 24(2) of the *Residential Tenancy Act*.

While the Landlord applied for arbitration, within 15 days of receipt of the forwarding address of the Tenant, he had no authority to retain any portion of the deposit having already extinguished his right to claim against that deposit.

Accordingly, I Order the Landlord to return the Tenant's security deposit. 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. Accordingly, the Landlord must return the sum of **\$830.00** representing double the \$415.00 security deposit paid.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove his claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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.

I find the Landlord has failed to prove his claim that he suffered a loss of one half month's rent due to the Tenant's actions. He testified that he found a new renter, and then stated that he changed his mind as he felt this person was unacceptable. This suggests to me that he was in fact able to rent the unit. The onus is on the Landlord to prove his claim and in all the circumstances, I find he failed to submit sufficient evidence to support a finding that he was unable to rent the rental unit following the subject tenancy due to any of the Tenant's actions.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must

leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The photos submitted in evidence show a rental unit that was left reasonably clean and undamaged. I am not persuaded, after careful consideration of the evidence filed and the testimony of the parties, that the rental unit required cleaning over and above that done by the Tenant. Accordingly, I dismiss the Landlord's claim for \$90.00 for compensation for his time allegedly spent cleaning the rental unit. For similar reasons, and as the Landlord failed to submit any documentary evidence to support his claim for \$22.00 for cleaning supplies, I dismiss the Landlord's claim for compensation for this alleged expense.

The Tenant admitted she removed the shower curtain and shower curtain rings. While she may have deemed these items to be unusable or unsightly, she is not permitted to dispose of the Landlord's possessions without his express permission. The Tenant claimed the shower curtain rings remained in the rental unit following the tenancy. The Landlord claimed they were removed with the shower curtain. I find it more probable that the shower curtain rings and shower curtain were both disposed of by the Tenant and accordingly I grant the Landlord's claim for **\$41.97** for compensation for these items.

The Tenant also admitted she made two holes in the interior of the closet. *Residential Tenancy Branch Policy Guideline 1 Landlord & Tenant – Responsibility for Residential Premises* provides as follows:

RENOVATIONS AND CHANGES TO RENTAL UNIT

1. Any changes to the rental unit and/or residential property not explicitly consented to by the landlord must be returned to the original condition.

While the hooks may have been helpful to the new renters, there was no evidence to support a finding that the Landlord explicitly consented to these hooks being installed. Accordingly, I award the Landlord **\$30.00** as claimed for repairing the holes caused by these hooks.

As the parties have enjoyed divided success, I dismiss the Landlord's claim for recovery of the \$50.00 filing fee.

The \$830.00 awarded to the Tenant pursuant to this my Decision is to be offset by the \$41.97 awarded to the Landlord for the replacement cost of the shower curtain and rings and the \$30.00 awarded to him for repairing the holes in the closed. The Tenant is granted a Monetary Order in the amount of **\$758.03** and must serve the Order on the Landlord. If necessary, the Tenant may file and enforce the Order in the B.C. Provincial Court (Small Claims Division) as an Order of that Court.

Conclusion

The Landlord failed to perform an incoming condition inspection such that he extinguished his right to claim against the security deposit. The Tenant is awarded return of double the deposit pursuant to section 38 of the *Act* in the amount of \$830.00.

The Landlord failed to submit sufficient evidence to support his claim for lost rental revenue or compensation for the time and expenses he claimed for cleaning the rental unit and those claims are dismissed.

The Landlord is awarded \$41.97 of the cost to replace a shower curtain and \$30.00 for the time spent repairing holes in the closet interior for a total of \$71.97.

The Landlord's claim for recovery of the filing fee is dismissed.

These amounts are offset against one another such that the Tenant is awarded a Monetary Order for the sum of **\$758.03**.

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: April 27, 2016

Residential Tenancy Branch