



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for damage to the unit, site or property, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on December 14, 2015 and then again about one month later. The Tenant said they received the Landlord's hearing package in the second delivery and she does not dispute serve of the documents because she did not pick up the first registered mail package. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties present.

Issues(s) to be Decided

1. Is there damage to the unit, site or property and if so how much?
2. Is the Landlord entitled to compensation and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on June 29, 2013 as a one year fixed term tenancy and then continued on a month to month basis. Rent was \$1,500.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$775.00 and a pet deposit of \$400.00 at the start of the tenancy. A move in condition inspection report was completed but it was not signed by the Tenant and the Tenant did not receive a copy. Both parties agreed no move out condition inspection report was completed. The Tenant gave the Landlord her forwarding address on December 1, 2015.

The Landlord said the Tenant left the rental unit in poor condition. The Landlord continued to say she hired a company to clean and repair the rental unit. As a result the

Landlord said she is now requesting compensation from the Tenant for the costs that she incurred to clean and repair the unit.

The Landlord said she is requesting the following compensation:

1. Carpet Cleaning	\$300.00	
2. Refinishing scratches on cabinets	\$200.00	
3. Replacing light bulbs	\$ 20.00	
4. Replacing a faucet	\$112.00	
5. Replacing a door jam and painting	\$ 80.00	
6. Re patching walls	\$200.00	
7. Cleaning the rental unit	\$120.00	
8. Management fee	\$350.00	
9. Removing patio furniture	\$ 75.00	
10. GST	\$ 72.85	
Sub Total		\$1,529.85
Postal costs for the hearing	\$100.00	
Filing fee	\$ 50.00	
Sub Total		<u>\$ 150.00</u>
Total claim		<u>\$1,679.85</u>

The Landlord said she submitted photographs to support her application and her total claim is for \$1,679.50.

The Tenant said that she thought the Landlord and she had a good relationship and she was surprised by the claims the Landlord is making. The Tenant continued to say she agree to the carpet cleaning in the amount of \$175.00, the refinishing of the bathroom door at \$80.00 and she agreed she left some patio furniture at the unit when she moved out. The Tenant said as for the other claims the Landlord has made she does not agree with them. The Tenant said the Landlord is claiming double what carpet cleaning costs, the scratches on the cabinets were there at the start of the tenancy, she replaced all the light bulbs before leaving, the faucet wore out and then broke, she did as the Landlord instructed her to do by patching the walls but was told not to paint, the unit was clean as shown by the Tenant's photographs and she does not agree with the management fee. The Tenant continued to say the company that did the work is personally related to the Landlord and the amounts are greatly inflated.

The Landlord said the unit was in good condition at the start of the tenancy and no pets or kids have been in the unit before so there were no scratches on the cabinets.

The Tenant said when she moved in the previous tenants were still moving out and they had a Rottweiler dog. The Tenant said the Landlord is mistaken about no pets in the rental unit previously.

The Landlord continue to say the Tenant did contact her by phone at 10:15 p.m. the night of November 30, 2015 to do the move out inspection but the Landlord said she was not at home so she could not do it. Further the Landlord said the Tenant was uncooperative after that in getting a time to do the move out inspection; therefore the inspection was not done. The Tenant said that she was very business and they could not arrange a time that worked for both the Landlord and the Tenant. The Property Manager said no written notices were given to the Tenant to participate in the move out inspection.

In closing the Tenant said the Landlord has misrepresented the costs of repairs and because there was no condition inspection reports completed she does not believe the Landlord should be successful.

The Landlord said in closing that the Tenant did not clean the unit and the Tenant damaged the rental unit. Further the Tenant did not cooperate in doing a move out inspection so the Tenant should be responsible for the Landlord's costs to bring the unit back to its original condition.

Analysis

Section 23 and 35 of the Act say that a landlord and tenant must do condition inspection reports to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit.

Further the Residential Tenancy Branch regulations say a condition inspection report must be completed, signed and given to the parties at the start and end of the tenancy.

On reviewing the evidence and testimony, I find the Landlord's property manager completed a move in condition inspection report but did not have the Tenant sign it and the Tenant did not receive a copy of the report. Further no move out condition inspection report was complete as required by the Act. Consequently, it is unclear as to the condition of the rental unit on move in and on move out. It is the Landlord responsibility to do both these report and if the reports are not completed the Landlord is unable to establish the condition of the rental unit at the start or end of the tenancy. Consequently the Landlord cannot establish proof that the Tenant damaged the rental unit or left it in a condition that was not similar to the start of the tenancy. As a result of

lack of proof to establish the condition of the rental unit at the start and the end of the tenancy, I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

Further as the Tenant said she would pay the Landlord for carpet cleaning in the amount of \$175.00, to repair the door jams in the amount of \$80.00 and that the Tenant did leave patio furniture at the rental unit for the Landlord to dispose of at a cost of \$75.00; I award the Landlord these costs. Consequently I order the Landlord to retain \$330.00 of the Tenant's security deposit. Further I order the Landlord to return \$395.00 of the security deposit and the full \$400.00 of the pet deposit to the Tenant. I order the Landlord to return \$795.00 of the Tenant's deposits forthwith.

As well, as the Landlord was only partially successful in this matter I dismiss her application to recover the filing fee of \$50.00 from the Tenant.

Conclusion

The Landlord is ordered to return \$795.00 of the Tenants deposits forthwith.

A Monetary Order in the amount of \$795.00 has been issued to the Tenant. A copy of the Order must be served on the Landlord: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: July 13, 2016

Residential Tenancy Branch