



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This was a hearing with respect to the landlords' claim to retain the tenant's pet and security deposits. The hearing was conducted by conference call. The named parties called in and participated in the hearing.

Issue(s) to be Decided

Are the landlords entitled to an order authorizing them to retain all or part of the pet and security deposits?

Preliminary matter

The Rules of Procedure with respect to digital evidence provides that:

3.10 Digital evidence

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence. Digital evidence must be accompanied by a printed description, including:

- a table of contents;
- identification of photographs, such as a logical number system;
- a statement for each digital file describing its contents;
- a time code for the key point in each audio or video recording; and
- a statement as to the significance of each digital file.

To ensure a fair, efficient and effective process, identical digital evidence and the accompanying printed description must be served on each respondent and submitted to the Residential Tenancy Branch directly or through a Service BC office.

The format of digital evidence must be accessible to all parties. Before the hearing, the party submitting the digital evidence must determine that the other

party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence.

If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The applicants submitted all of their evidence on a USB stick, including copies of documents not permitted to be submitted as digital evidence; in particular photographs of documents, such as the tenancy agreement, a monetary order worksheet, receipts, text messages and various other notes and documents as well as evidence that was properly submitted in digital format, such as photographs and video evidence. The tenants have submitted some documentary evidence in proper form, such as a copy of the tenancy agreement and exchanges of text messages and other communications; these items have been considered, but the improper digital evidence submitted by the landlord has not been accepted or considered in arriving at a decision in this matter. The landlords' application was filed on December 15, 2015, but the digital evidence was not received by the Residential Tenancy Branch until July 7, 2016.

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began July 1, 2011. The monthly rent was \$1,500.00 and the tenants paid a security deposit of \$750.00 and a pet deposit of \$750.00 at the start of the tenancy. There was a separate pet agreement prepared by the landlord.

The tenants gave notice to end the tenancy on by e-mail dated October 12, 2015. The Notice was to be effective December 1, 2015. The tenant commented in the e-mail that the white carpets were "not in the best shape" and probably needed replacement.

The tenants moved out December 1, 2015. The landlord said that the carpets were stained by the tenants' pets. According to the landlord the carpets were four years old and they were replaced with laminate. The landlord said there were patch marks on the walls and the unit was not properly cleaned. The landlord said that according to the monetary order worksheet the landlord was claiming damages of \$7,841.00, although the landlords' application for dispute resolution requested \$1,500.00, being the amount of deposits held by the landlords. The landlords did not submit an amendment to the application for dispute resolution to claim an increased amount. (The monetary worksheet itself has been excluded as evidence).

The tenants testified and submitted documents from the mother of one of the tenants setting out the cleaning that was done at the end of the tenancy. The tenants also submitted photos of the rental unit taken after it was cleaned.

The landlords submitted video footage of the rental unit and pictures taken at the time of the move-out inspection. There was no move-in inspection conducted by the landlord and according to the tenants, they did not take part in a move out inspection because the female tenant was pregnant and about to give birth at the end of the tenancy.

Analysis

The landlord's photos and video suggest that the carpets were stained in the rental unit at the end of the tenancy. There were also patch marks on the walls and areas where the cleaning was not thorough, notably on the balcony, inside certain cupboards and behind some appliances.

This is the landlord's application and they bear the burden of proving their entitlement to a monetary award on a balance of probabilities. The burden of proving both that the tenants caused damage exceeding reasonable wear and tear and the actual expenditures made to clean and repair the rental unit rests with the landlords.

There is no move-in inspection report and no pictures of the rental unit at the commencement of the tenancy. The landlord submitted photographs that showed stains and carpet damage and the tenants commented on the state of the carpet in their e-mail giving notice to the landlord. The landlord's evidence is that the carpet was replaced with laminate flooring. The landlord has not provided evidence in the form of invoices for the cost of carpet replacement and in the absence of evidence to establish the condition of the carpet at the beginning of the tenancy I find that the landlords have failed to prove on a balance of probabilities the extent of the damage to the carpets attributable to the tenants or the cost incurred to replace the carpet. Similarly the landlord has not provided proper invoices or other evidence to support other amounts claimed for cleaning or repairs.

I find that the landlords have failed to prove on a balance of probabilities that they are entitled to retain any amount from the security deposit and pet deposit that they hold and the landlords' claim to retain the deposits is dismissed without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlords requested the retention of the security deposit and pet deposit satisfaction of their monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenants' security deposit with interest; I so order and I grant the tenants a monetary order in the amount of \$1,500.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlords' application has been dismissed without leave to reapply. The tenants have been granted a monetary order in the amount of their deposits.

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: August 08, 2016

Residential Tenancy Branch