



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, OLC, MND, FF

Introduction

This was a cross-application hearing.

The tenants applied on April 16, 2016 requesting return of the security deposit, an order the landlord comply with the Act and to recover the filing fee cost from the landlord.

On May 11, 2016 the landlord applied requesting compensation for damage to the rental unit; compensation for damage or loss under the Act; to retain the deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The agent for the landlord provide affirmed testimony that on May 14, 2016 copies of the Application for Dispute Resolution and Notice of Hearing were sent to each tenant by registered mail. A Canada Post tracking number was supplied for each respondent. The landlord used the forwarding address supplied by the tenants on April 16, 2016.

These documents are deemed to have been served on the fifth day after mailing, in accordance with section 89 and 90 and 90 of the *Act*.

Neither tenant attended the hearing.

Preliminary Matters

The landlord confirmed receipt of the tenants' hearing documents on May 12, 2016.

The landlord stated that the respondent named on the tenants' application is the property management company that acts as agent for the owner of the property. The landlords' application names the owner, as the applicant. The application was amended to clarify the agent and owner name.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the security deposit in the sum of \$589.54?

Background and Evidence

The tenancy commenced on May 1, 2015 and was a fixed term to April 30, 2016. The tenancy ended by agreement on April 30, 2016.

Rent was \$1,695.00 due on the first day of each month. A security deposit in the sum of \$847.50 was paid.

A copy of the tenancy agreement was supplied as evidence.

The landlord has claimed the following:

- \$210.00 carpet cleaning;
- \$309.75 cleaning;
- \$45.00 remote; and
- \$24.79 light cover.

The landlord supplied a copy of a move-in and separate move-out condition inspection report. The move-out inspection report included notations that the tenants agreed to deductions for carpet cleaning, cleaning, wall scuffs, and a garage remote and light cover. The landlord confirmed that no specific sums to be deducted from the deposit were indicated on the inspection report. The cost of each item was listed as to be determined. The landlord then checked a box on the report which included:

"Landlord holds entire deposit until it's determined how much."

(Reproduced as written)

The landlord has now established the costs for the items the tenants agreed were damaged. Invoices in support of the costs were supplied. Photographs of the unit, showing the damage and need for cleaning, were supplied as evidence.

A copy of a "security deposit return" document was submitted; showing the specific deductions made from the deposit. A refund in the sum of \$257.96 was due to the tenants and returned.

Analysis

Section 35 of the Act sets out the requirement for a condition inspection at the end of the tenancy; this occurred. The parties met and the tenants signed agreeing to certain damages caused. However, there were no details provided on the report setting a specific sum that was agreed to be deducted from the deposit.

Therefore, I find that in the absence of any specific sums indicated on the inspection report that the landlord did not have the authority to make any deduction from the deposit. As explained during the hearing, the landlord erred when they included a notation on the report that the deposit would be held until the sums owed were established. The Act provides that a tenant may sign at the end of a tenancy agreeing to deductions from a deposit, the specific sums to be deducted must be provided at that time.

Section 38(1) of the Act requires a landlord to either repay the deposit or make an application against the deposit within 15 days of the end of the tenancy or the date the written forwarding address is given by the tenants; whichever date is later. Therefore, the landlord had 15 days from April 30, 2016 to either return the deposit in full or submit an application claiming against the deposit. This was required as the landlord had not obtained the tenants' written permission for specific sums to be deducted.

The landlord applied claiming against the deposit on May 11, 2016; within 15 days of April 30, 2016.

Therefore, in the absence of the tenants who did not attend the hearing in support of their application or to oppose the landlords' claim, I find that the landlord is entitled to compensation as claimed in the sum of \$598.54.

The landlord has retained the sum claimed and previously returned the balance of the deposit to the tenants.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary order in the sum of \$100.00. In the event that the tenants do not comply with this order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

As the tenants failed to attend the hearing in support of their claim I find that the tenants' application is dismissed.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$589.54 in satisfaction of the monetary claim.

The landlord has previously returned the balance of the claim to the tenants.

The landlord is entitled to filing fee costs.

The tenants' claim is dismissed.

This decision is final and binding and 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: October 12, 2016

Residential Tenancy Branch