



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVANCED PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC FF
	Tenant:	MNSC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application is dated June 16, 2016 (the “Landlord’s Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenant’s Application was received at the Residential Tenancy Branch on June 13, 2016 (the “Tenant’s Application”). The Tenant applied for the following relief pursuant to the *Act*:

- an order that the Landlord return the security deposit or pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.F., an agent. The Tenant attended the hearing on his own behalf. Both provided a solemn affirmation.

On behalf of the Landlord, L.F. testified the Tenant was served with the Landlord’s Application package by registered mail on June 21, 2016. The Tenant confirmed receipt. In addition, the Tenant testified his Application package was served on the Landlord by leaving a copy at the Landlord’s office. L.F. acknowledged receipt on behalf of the Landlord. No issues were raised with respect to service or receipt of these documents.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a money owed or compensation for damage or loss?
3. Is the Landlord entitled to recover the filing fee?
4. Is the Tenant entitled to an order granting the return of the security deposit or pet damage deposit?
5. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Landlord provided a copy of the tenancy agreement between the parties. It confirms a fixed-term tenancy for the period from March 15 to May 31, 2016. Furniture and linens were included with the rental unit. The Tenant paid \$2,700.00 in advance, which consisted of \$2,250.00 in rent and \$450.00 for the security deposit. The Tenant moved out of the rental unit on or before May 31, 2016.

The Landlord's claim included several cleaning and other charges incurred at the end of the tenancy. First, the Landlord claimed \$89.25 to clean the carpets in the rental unit.

Second, the Landlord claimed \$100.00 to clean the bathroom, walls, windows, kitchen, floors, fixtures and furniture.

Third, the Landlord claimed \$75.00 to clean the linens and dishes in the rental unit. In support of each of the above cleaning charges, the Landlord provided copies of the condition inspection reports, photographs of the interior of the rental unit, and receipts.

Fourth, the Landlord claimed \$95.75 in partial recovery of the cost to replace a white loveseat that was damaged by the Tenant. According to L.F., the Tenant placed red tape over a large portion of the arm of the loveseat, and that the loveseat had to be replaced. L.F. testified that the Landlord is prepared to forego the additional expense over the amount claimed. Although a photograph depicting the red tape on the arm of

the loveseat was provided, the Landlord did not submit a receipt or other documentation with respect to the cost of the replacement loveseat.

Finally, the Landlord sought to recover \$90.00 in overholding charges. However, according to L.F., the Tenant's sister contacted the Landlord on May 25, 2016, to advise that the Tenant had moved out of the rental unit. The Landlord attended the rental unit on that date and discovered the key to the rental unit on the counter. Accordingly, the Landlord left two notices of opportunity to conduct a condition inspection on May 31 and June 3, 2016. The Tenant did not attend the condition inspection at the end of the tenancy.

In reply, the Tenant testified that his sister attended the rental unit at the end of the tenancy and was told by an agent of the Landlord that no further cleaning was required. The Tenant claimed this was documented in a letter written by his sister which was not submitted into evidence.

The Tenant also acknowledged that he put red tape on the arm of the couch, but that this was necessary to prevent further damage that was already present when he moved into the rental unit. He claimed to have a photograph of the pre-existing damage, which was not submitted into evidence.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, they

must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

The Landlord's Claim

On behalf of the Landlord, L.F. provided oral testimony and documentary evidence in support of the Landlord's claim for cleaning costs incurred at the end of the tenancy. I find that the Landlord has demonstrated an entitlement to recover \$264.25 for cleaning required at the end of the tenancy.

The Landlord also sought to recover \$95.75 in partial satisfaction of the cost to replace a loveseat that was damaged by the Tenant with red tape. In light of the Tenant's acknowledgement that he placed red tape on the loveseat, I find the \$95.75 claimed by the Landlord to be reasonable and award this amount.

Finally, the Landlord claimed \$90.00 in overholding charges. However, I find that the Landlord was advised by the Tenant's sister on May 25, 2016, that the Tenant had vacated the rental unit. The Landlord attended the rental unit on that date and found the keys on the counter. I find the Landlord has not discharged the burden with under the above test with respect to the overholding charges.

In light of the above, I find that the Landlord has demonstrated an entitlement to an award of \$460.00, which consists of cleaning costs and loveseat replacement (\$360.00), plus the filing fee (\$100.00).

The Landlord has asked to apply the security deposit to any monetary award I make, which I allow. Accordingly, pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$10.00, which is the amount owing to the Landlord after the security deposit is applied.

The Tenant's Claim

The security deposit has been dealt with above as part of the Landlord's Application. I find it is not necessary for me to consider the Tenant's Application further.

As the Tenant has been largely unsuccessful, I have declined to award recovery of the filing fee.

Conclusion

Pursuant to section 38(4) of the *Act*, I order that the Landlord may retain the security deposit of \$450.00 in partial satisfaction of the monetary award granted to the Landlord.

The Landlord is granted a monetary order in the amount of \$10.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

As the security deposit was dealt with as part of the Landlord's Application, the Tenant's Application is dismissed.

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: December 06, 2016

Residential Tenancy Branch