



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC FF – Landlords’ application for Dispute Resolution
 MNDC MNDS - Tenant’s application for Dispute Resolution

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlords and Tenant.

The Landlords filed their application on June 14, 2016 seeking a \$200.48 Monetary Order for: damage to the unit, site or property; to keep all or part of the security deposit; and to recover the cost of the filing fee.

The Tenant filed her application on June 16, 2016, the day after she was personally served with a copy of the Landlords’ application and evidence, seeking \$850.00 as the return of double her security deposit.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

The Tenant provided a new service address during the hearing. That address is recorded on the front page of this decision.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to keep \$200.48 from the Tenant’s security deposit?
2. Has the Tenant proven entitlement to the return of double her security deposit?

Background and Evidence

The Tenant entered into a written fixed term tenancy agreement which began on January 1, 2016 and was not set to end until December 31, 2016. Rent of \$850.00 was payable on the first of each month. On or before December 31, 2015 the Tenant paid \$425.00 as the security deposit.

The tenancy ended by mutual agreement effective May 31, 2016. Both parties were represented and signed the move-in condition inspection report form on December 31, 2015. Both parties were represented and signed the move-out condition inspection report form on May 31, 2016. The Tenant provided the Landlords with her forwarding address on May 31, 2016 during the move out inspection.

The tenancy agreement included a one page addendum upon which the Tenant and Landlord's agent signed on December 7, 2015, in agreement to the terms listed on that addendum. A copy of the tenancy addendum was submitted into evidence and states, in part, as follows:

UPON VACATING THE PREMISES THE TENANT AGREES TO THE FOLLOWING:

-IT IS A MATERIAL TERM OF THE TENANCY AGREEMENT THAT ALL CARPETS WILL BE PROFESSIONALLY STEAM CLEANED BY A TRUCK MOUNTED CARPET CLEANER (PLEASE NOTE THAT RENTAL CARPET CLEANERS ARE NOT ACCEPTABLE)

[Reproduced as written]

The Tenant testified she did not have the carpets cleaned at the end of her tenancy because her tenancy lasted only five months. She stated she was told that she did not have to have the carpets cleaned if her tenancy was less than one year in length. She said that she also saw that information posted on the Residential Tenancy Branch (RTB) website.

The Tenant stated she was of the opinion that she was entitled to the return of double her deposit because she did not damage the rental unit and did not agree, in writing, for the Landlord to retain a portion of her deposit.

The Landlord testified that professional steam cleaning of the carpet was a material term of their legal contract to which the Tenant previously agreed. He asserted the tenancy agreement did not provide a clause excusing the Tenant from having to have the carpets cleaned if she moved out early.

In response to the Tenant's statement on her application about the Landlords withholding her deposit for no reason, the Landlord stated the Tenant had full knowledge of why they withheld the deposit as she had confirmed receiving their application for Dispute Resolution on June 15, 2016, the day before the Tenant filed her application.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Policy Guideline 1 provides that the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

Section 72(2)(b) provides that if the director orders a tenant to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Landlords' application

As noted above Policy Guideline 1 provides that a tenant "generally" is expected to clean carpets in tenancies lasting longer than a year. However, the undisputed evidence before me contradicts that policy as the parties entered into a written agreement at the outset of the tenancy which required the Tenant to have the carpets professionally cleaned at the end of the tenancy, with no specification on the length of that tenancy.

In such cases of contradictory evidence that disputes policy, section 62 of the *Act* prevails, giving an arbitrator the authority to make findings relevant to each individual matter as supported by common law as follows:

In *Powell v. British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835, October 05, 2016, the Honourable Mr. Justice Voith found in part, at p. 18:

[80] *The Guidelines should not, and do not, bind a decision-maker...*

[Reproduced as written]

Notwithstanding the Tenant's argument that her tenancy was less than one year in length, I accept the Landlords' submissions that the Tenant was contractually obligated to have the carpets professionally cleaned at the end the tenancy, regardless of the length of that tenancy, as stipulated in the tenancy agreement addendum.

As such, I find the Tenant did not comply with the tenancy agreement addendum when she failed to have the carpets professionally cleaned at the end of her tenancy. As a result I find the Landlords are able to recover the loss incurred to have the carpets professionally cleaned, as supported by the invoice submitted into evidence, pursuant to section 7 of the *Act*. Accordingly, I grant the Landlords' application to retain **\$200.48** from the Tenant's security deposit, pursuant to section 67 and 72 of the *Act*.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

Tenant's application

I accept the Tenant's submission that the Landlords did not have her written permission to retain any portion of her security deposit. That being said, the undisputed evidence was the tenancy ended May 31, 2016; the Landlords received the Tenants forwarding address on May 31, 2016; and the Landlords filed their application for Dispute Resolution to retain a portion of the security deposit 14 days later, on June 14, 2016. Therefore, I find the Landlords met the requirements of section 38(1) of the *Act*. Accordingly, the Landlords are **not** subject to the doubling provision provided under section 38(6) of the *Act*.

Based on the aforementioned, I find the Tenant submitted insufficient evidence to prove her application. Accordingly, I dismiss the Tenant's application for Dispute Resolution in its entirety, without leave to reapply.

Monetary Order – The Landlord's claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$425.00 deposit since December 2015.

Professional Carpet Cleaning	\$ 200.48
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 300.48
LESS: Security Deposit \$425.00 + Interest 0.00	<u>-425.00</u>
Offset amount due to the Tenant	<u>(\$ 124.52)</u>

The **Landlords** are hereby ordered to pay the Tenant the offset amount of **\$124.52** forthwith.

In the event the Landlords do not comply with the above Order, the Tenant has been issued a Monetary Order for **\$124.52** which must be served upon the Landlords.

Conclusion

The Landlords were successful with their application and were awarded \$300.48 which was offset against the Tenant's security deposit leaving a balance owed to the Tenant of \$124.52. The Tenant's application was dismissed in its entirety.

This decision is final, legally 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: December 09, 2016

Residential Tenancy Branch