Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wesbrook Properties A Division of UBC Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDC, OLC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for the return of the security deposit, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Application for Dispute Resolution and the Notice of Hearing were delivered to the Landlord's business address, although he cannot recall the date of service. The Agent for the Landlord stated that these documents were delivered to the Landlord's business address on July 28, 2016.

On December 09, 2016 the Tenant submitted 5 pages of evidence to the Residential Tenancy Branch. The Tenant stated that these documents were served with the Application for Dispute Resolution. Landlord stated that these documents were posted on the Tenant's door on November 22, 2016.

One of the documents submitted by the Tenant on December 09, 2016 was a letter dated November 28, 2016. When this letter was described during the hearing the Agent for the Landlord stated that it has never been received by the Landlord. As this evidence was dated November 28, 2016, I find that the Tenant's testimony that it was served on July 28, 2016 lacks credibility. I therefore find that the Tenant has submitted insufficient evidence to show that this document was served to the Landlord and it was not accepted as evidence for these proceedings.

Two of the documents submitted by the Tenant on December 09, 2016 were page one and two of an Application for Tenancy. When these items were described during the hearing the Agent for the Landlord stated that they have never been received by the Landlord. I find that the Tenant has submitted insufficient evidence to show that this document was served to the Landlord as evidence for these proceedings and it was not accepted as evidence for these proceedings.

One of the documents submitted by the Tenant on December 09, 2016 was a receipt for carpet cleaning. When this receipt was described during the hearing the Agent for the Landlord stated that it was received by the Landlord at the end of the tenancy but it was not served as evidence for these proceedings. I find that the Tenant has submitted insufficient evidence to show that this document was served to the Landlord as evidence for these proceedings and it was not accepted as evidence for these proceedings.

One of the documents submitted by the Tenant on December 09, 2016 was a security deposit refund statement. When this document was described during the hearing the Agent for the Landlord stated that it was a document generated by the Landlord at the but it was not served as evidence for these proceedings. I find that the Tenant has submitted insufficient evidence to show that this document was served to the Landlord as evidence for these proceedings and it was not accepted as evidence for these proceedings.

Typically when one party alleges a document was served and the other party does not acknowledge receiving it I adjourn the proceedings to provide the serving party time to re-serve the document the party that does not acknowledge receiving it I did not find it necessary to adjourn these proceedings, as none of the evidence submitted by the Tenant is relevant to a fact in dispute between the parties.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to the return of double the security deposit and/or compensation for cleaning?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began in July of 2010
- a security deposit of $1,000.00 was paid in July of 2010; and
- the Landlord did not file an Application for Dispute Resolution claiming against the security deposit.

The Agent for the Landlord stated that the tenancy ended on June 30, 2016. The Tenant stated that it ended on July 01, 2016.

The Tenant stated that at the end of the tenancy he provided the Landlord with a forwarding address, via email, although he cannot recall the date of service. The Agent for the Landlord stated that the Landlord did not receive a forwarding address for the

Tenant, via email, and the Landlord did not receive a forwarding address, in writing, until the Landlord was served with notice of these proceedings.

The Tenant stated that even if the Landlord did not receive his forwarding address the Landlord knew where he was living, as he moved into another residential complex operated by the same Landlord.

The Tenant stated that he did not give the Landlord written authority to retain any portion of his security deposit. The Agent for the Landlord stated that when the Tenant signed the condition inspection report on June 30, 2016 he agreed that the Landlord could retain $32.48 from his security deposit. The Tenant stated that when he signed this report he specifically declared that he did not agree to a deduction of $32.38. Neither party submitted a copy of the condition inspection report that was completed on June 30, 2016.

The Landlord and the Tenant agree that the Landlord did not file an Application for Dispute Resolution in which the Landlord applied to retain the Tenant's security deposit.

The Landlord and the Tenant agree that the Landlord returned a portion of the Tenant's security deposit, in the amount of $967.52. The Agent for the Landlord stated that the Tenant picked up this payment from the Landlord's business office on July 11, 2016. The Tenant stated that he cannot recall if this payment was mailed to him or if he picked it up from the Landlord's business address.

The Tenant has claimed $170.00 for "move out cleaning that was not required". IN support of this claim the Tenant stated that:

- when this tenancy ended the Landlord told the Tenant that the carpets must be professionally cleaned;
- the Landlord told the Tenants that they must use a specific carpet cleaning company;
- the Tenant had the carpets professionally cleaned, at a cost of $147.00;
- the Tenant has not shampooed the carpets during this tenancy; and
- the Tenant does not believe the carpets needed shampooing, as the occupants did not wear shoes in the unit.

In response to the claim to recover cleaning costs the Agent for the Landlord stated that:

- the Landlord expects tenants to shampoo the carpet at the end of the tenancy for any tenancy of one year or more;
- the Landlord did tell the Tenant that they would require proof that the carpet was professionally cleaned;
- the Landlord recommended the carpet cleaner used by the Tenant, but they did not require the Tenant to use that carpet cleaner;
- the Tenant provided the Landlord with a receipt to show that the Tenant paid $147.00 for cleaning the carpet; and

- the Landlord did tell the Tenant the full security deposit would not be returned if the carpet was not professionally cleaned.

Analysis:

There is a general legal principle that places the burden of proving facts on the person who is claiming compensation. As this is the Tenant's Application for Dispute Resolution, the burden of proving the merits of his claim rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that he provided the Landlord with his forwarding address, in writing, when the tenancy ended. In reaching this conclusion I was strongly influenced by the absence of evidence, such as a copy of the email, that corroborates the Tenant's testimony that he provided the forwarding address, via email, or that refutes the Agent for the Landlord's testimony that the Landlord did not receive a forwarding address until it was served with the Application for Dispute Resolution.

In adjudicating this matter I have placed no weight on the Tenant's submission that the Landlord knew where he was living after the tenancy ended, as he moved into another residential complex operated by the same Landlord. Even when a tenant enters into a new tenancy with the same landlord, the tenant remains obligated to provide a forwarding address to the landlord when the tenancy ends in a manner that directly relates to the first tenancy. There can be no expectation that a landlord, which operates several properties, is cross referencing the two tenancies.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

On the basis of the undisputed evidence I find that the Landlord received a forwarding address for the Tenant, in writing, when the Landlord was served with the Tenant's Application for Dispute Resolution.

I find that it would be inappropriate and unfair to conclude that the Tenant has provided the Landlord with a forwarding address in writing for the purposes of section 38 of the *Act* when the address was served with the Application for Dispute Resolution. I find that the legislation contemplates that the forwarding address be provided, in writing, prior to a tenant filing an Application for Dispute Resolution. I find it would be unfair to landlords to conclude differently, as the landlord may be led to believe that it is too late for the landlord to make a claim against the deposit because the matter is already scheduled to be adjudicated.

As the Tenant did not provide the Landlord with a forwarding address prior to filing an Application for Dispute Resolution, I dismiss his application to recover the security

deposit. The Tenant retains the right to provide the Landlord with a forwarding address, in writing, in a manner than complies with section 88 of the *Act.* The Tenant retains the right to file another application to recover all or part of the security deposit if the Landlord does not return the security deposit or claim against the deposits after being provided with that forwarding address.

For the benefit of both parties, the parties are reminded that section 37 of the *Act* requires tenants to leave a rental unit in reasonable clean condition at the end of the tenancy As the Landlord has not claimed compensation for cleaning the carpet in the rental unit, I find there is no need for me to determine whether or not the Tenant was obligated to clean the carpet in the rental unit at the end of the tenancy. .

To provide further clarification to the parties, Residential Tenancy Branch Policy Guideline #1, reads, in part:

1. At the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair.
2. The landlord is not expected to clean carpets during a tenancy, unless something unusual happens, like a water leak or flooding, which is not caused by the tenant.
3. 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.
4. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

There is nothing in the *Act* that requires a tenant to follow a landlord's directions in regards to cleaning a rental unit at the end of the tenancy. In the event a landlord does not believe a rental unit has been left reasonably clean, the landlord may suggest to a tenant that additional cleaning is required; the landlord may ask the tenant to agree to pay for the cost of additional cleaning; and/or the landlord may apply to the Residential Tenancy Branch for compensation for cleaning costs. Conversely, a tenant may agree to complete additional cleaning; the Tenant may agree to pay the costs of additional cleaning; or the tenant may respond to a claim for cleaning costs by arguing that additional cleaning was not required.

As the Landlord had no legal right to require the Tenant to complete additional cleaning and the Tenant was under no legal obligation to comply with the Landlord's direction to clean the carpets, I find that the Tenant is not entitled to compensation for cleaning the carpet. I find that it was reasonable for the Landlord to suggest that the carpet be professionally cleaned after a tenancy of approximately six years and that the Landlord did not breach the *Act* by making this suggestion to the Tenant. I therefore dismiss the Tenant's application to recover the cost of cleaning the carpet.

I find that the Tenant has failed to establish the merit of his Application for Dispute Resolution and I therefore dismiss his application to recover the fee paid to file this Application.

Conclusion:

The Tenant's application for the return of his security is dismissed, with leave to reapply.

The Tenant's application to recover cleaning costs 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: January 28, 2017

Residential Tenancy Branch