



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on July 22, 2016. The Landlord filed seeking a \$1,676.36 Monetary Order to: keep all or part of the security deposit; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord who provided affirmed testimony that he served the Tenant with copies of his application for Dispute Resolution; Notice of Hearing documents; and his evidence via registered mail.

I heard the Landlord state that he received a package from the Tenant on January 11, 2017 which included a USB stick or flash drive and written submissions in response to his application for Dispute Resolution. The Landlord stated that he was not able to view any of the contents on the USB or flash drive and asserted that it was blank or corrupted. A USB stick and 5 pages of documentary evidence submitted by the Tenant were received on file by the Residential Tenancy Branch (RTB) on December 30, 2016.

Based on the undisputed evidence of the Landlord, and in the presence of the digital and documentary evidence received on file from the Tenant, I find the Tenant was sufficiently served with copies of the Landlord's application and Notice of hearing documents. As such I continued in the absence of the Tenant.

Evidence must be presented by the party who submitted it, or by the party's agent, during the hearing, as per RTB Rule of Procedure 7.4. If a party or their agent does not attend the scheduled hearing to present evidence, the Rules of Procedure state an arbitrator may decide not to consider any written submissions that were not presented.

As per the foregoing, and after consideration of the Landlord's testimony that he was not able to view any contents on the USB stick, I declined to consider the submissions received on file from the Tenant. As such, I considered the undisputed evidence of the Landlord.

Issue(s) to be Decided

1. Has the Landlord met the burden to prove his claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
2. Did the Landlord extinguish his right to file a claim against the security deposit?

Background and Evidence

The Tenant occupied the rental unit based on a verbal tenancy agreement that began in August of 2014. Rent of \$850.00 was payable at the end of each month. The Tenant paid \$425.00 as the security deposit just prior to the start of the tenancy.

The Landlord submitted that he gave the Tenant verbal notice in April 2016 of their plans to sell the house. The Landlord stated that since telling the Tenant of their intentions the Tenant simply stopped cleaning up after himself or his cat.

The parties entered into a written Mutual Agreement to end the tenancy effective June 30, 2016 at 2:00 p.m. The Landlord stated he provided the Tenant with one month's free rent due to their decision to list the house for sale. The Landlord submitted the Tenant over held possession of the rental unit vacating on Saturday July 2, 2016. He stated he received the Tenant's forwarding address on July 10, 2016 and the Tenant failed to return the rental unit keys.

I heard the Landlord state that he did not complete a condition inspection report form at move in as he was a new landlord and did not know he was supposed to complete that form. He stated that he attempted to conduct a move out inspection and the Tenant refused to attend as he was "too busy to do so".

The Landlord testified the rental unit was left requiring "extensive" cleaning throughout, and the carpets had to be deodorized and cleaned to remove carpet stains. The Landlord now seeks \$1,676.36 which is comprised of: \$124.95 for carpet cleaning; \$155.71 for deodorizer and cleaning supplies; \$1,295.70 for extensive cleaning; and the \$100.00 filing fee.

Analysis

The *Act*, section 62 (2), 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:

The *Residential Tenancy Act* defines a "**tenancy agreement**" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement, as submitted by the Landlord, are recognized and enforceable under the *Residential Tenancy Act* (the Act).

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 without 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 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

In absence of any submissions from the Tenant at the hearing, I considered the Landlord's submissions to be undisputed. As such, I accept that at the end of the tenancy, the Tenant left the rental unit in a condition that breached section 37 of the Act. As such, I accept the Landlord's submissions that he suffered a loss to clean the rental unit and carpets and I grant his application in the amount of **\$1,576.36**, pursuant to sections 7 and 67 of the Act.

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.

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

Regarding the disbursement of the security deposit, a landlord and tenant together must inspect the condition of the rental unit and complete a condition inspection report form,

in accordance with the Regulations, at move-in and move-out respectively, pursuant to sections 23 and 35 of the *Act*. From the Landlord's submissions the Landlord did not complete a condition inspection report form at move in and the Tenant refused to attend the move out inspection.

If the landlord does not complete condition inspection report forms, in compliance with sections 23 and 35 of the *Act*, the right of the landlord to claim damages against the security and/or pet deposit is extinguished, pursuant to sections 24 and 36 of the *Act*.

Based on the aforementioned, I concluded that both parties extinguished their right to the security deposit. In such cases, I refer to Residential Tenancy Policy Guideline 17 which provides, in part, that in cases where both the landlord's right to retain the deposit and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to complete an inspection report at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.

While extinguishment does not prevent a landlord from filing a claim to seek monetary compensation for damages, the extinguishment clause means the landlord cannot retain the deposits to offset or apply against the cost to repair damages. If a landlord extinguishes their right to claim against the security deposit the landlord is required to **return** the deposits to the tenant in accordance with section 38(1) of the *Act*.

Section 38(1) of the *Act* stipulates, in part, 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.

This tenancy ended June 30, 2016 based on the mutual agreement to end tenancy and the Landlord received the Tenant's forwarding address on July 10, 2016. The Landlord did not complete condition inspection report forms at move-in; therefore, the Landlord extinguished their right to claim against the \$425.00 security deposit, pursuant to section 23 of the *Act*. As such the Landlord was required to **return** the security deposit to the Tenant no later than July 25, 2016, pursuant to section 38(1) of the *Act*.

The Landlord did not return the deposit to the Tenant; therefore, I find the Landlord is subject to 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, which in this case is **\$850.00** (\$425.00 x 2).

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$425.00 deposit since August 2014.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the disbursement of the Tenant's security deposit as follows:

Landlord's monetary award	\$1,576.36
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,676.36
LESS: Security Double Deposit 2 x \$425.00	<u>-850.00</u>
Offset amount due to the Landlord	<u>\$ 826.36</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of **\$826.36** forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$826.36** which may be enforced through Small Claims Court after service to the Tenant.

Conclusion

The Landlord was awarded \$1,676.36 which was offset against double the security deposit leaving a balance owed to the Landlord of \$826.36

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: January 18, 2017

Residential Tenancy Branch