



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

On January 27, 2017 the landlord submitted seven photographs to the Residential Tenancy Branch. Those photos were not before me. The tenant had copies of the photographs. The hearing proceeded, with the landlord describing the images.

There was a claim for damage only; not damage or loss under the Act.

The parties confirmed receipt of the evidence supplied by each and their ability to proceed on that evidence.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$260.00 for cleaning and \$300.00 for removal of shelving units?

May the landlord retain the security deposit?

Background and Evidence

The tenancy commenced in April 2011. The tenant paid a security deposit in the sum of \$412.50. In 2014 the current landlord assumed the tenancy. A copy of the tenancy agreement signed in 2011 was supplied as evidence.

A move-in condition inspection report was completed.

The tenancy ended effective July 31, 2016 and a move-out inspection was completed on that date. A copy of the inspection report was supplied as evidence. The tenant provided a forwarding address on the inspection report. This on-line application was made on Tuesday, August 16, 2016. The tenant said she was not given a copy of the inspection report until provided with the landlords' evidence, in January, 2017. The landlord said the tenant took photos of the inspection report on July 31, 2016.

The landlord recorded areas of the unit that had not been cleaned; the fridge, oven, stove top and carpet. The landlord assigned \$260.00 for cleaning costs. The landlord uses a pre-determined rate for cleaning. The tenant supplied a copy of the list of charges issued by the landlord, entitled "move out charge price list." The landlord imposes a suite cleaning fee of \$65.00 per hour for a minimum of four hours. Furniture removal is set at \$150.00 per piece.

I asked the landlord what the actual cost of cleaning would have been. The landlord responded that perhaps \$100.00 was incurred.

The tenant said that the oven does not look like it was cleaned but she did clean it as best she could. The tenant acknowledges that the freezer was not cleaned. The tenant said she and a friend spent several hours cleaning the unit. The carpets were over 10 years old. The tenant vacuumed the carpets, but they were worn.

The landlord said the carpets were replaced at the end of the tenancy.

The landlord charged the tenant a fee of \$150.00 each for two shelving units that the tenant failed to remove at the end of the tenancy. The tenant said that when she moved into the unit the shelves were there. The tenant told the landlord that they were not her shelves to remove and that she did not own them. The landlord said that they had not been agent at the time the tenancy commenced but there should have been a notation on the inspection report mentioning the shelves and there was none.

Analysis

Section 37(2) of the Act provides:

2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the evidence before me, based on the balance of probabilities, I find that the tenant did not fully clean the oven, stove and fridge. The tenant acknowledged that the oven did not look clean and that the freezer had not been cleaned. Therefore, I find that the landlord is entitled to what I find is a reasonable sum of \$60.00 for cleaning those items.

Setting arbitrary costs for cleaning does not support the intent of the Act. A party may be compensated for actual loss. I have rejected the landlords' claim for a minimum fee of four hours cleaning as contrary to the intent of the legislation.

The carpets were aged and replaced at the end of the tenancy. As a result I find that any claim for cleaning the carpets is not supported and is dismissed.

Therefore, the landlord is entitled to cleaning costs of \$60.00; the balance of the claim is dismissed.

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 tenant for the cost of this Application for Dispute Resolution.

Residential Tenancy Branch policy suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant.

Sec 38(1) of the Act provides:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The landlord received the tenants' forwarding address on July 31, 2016.

Section 38(6) of the Act sets out the consequences when a deposit is not returned as required:

- (6) If a landlord does not comply with subsection (1), the landlord*
- (a) may not make a claim against the security deposit or any pet damage deposit, and*
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.*

The landlord did not apply to retain the deposit until the 16th day after receipt of the written address and end of tenancy. Therefore, I find that the landlord failed to comply with section 38(1) of the Act and that, pursuant to section 38(6) of the Act the landlord is holding a security deposit in the sum of \$825.00.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$160.00 in satisfaction of the monetary claim.

Based on these determinations I grant the tenant a monetary order for the balance of the deposit in the sum of \$665.00. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to retain the tenant's security deposit in the amount of \$160.00 in satisfaction of the monetary claim. The balance of the claim is dismissed.

The tenant is entitled to return of double the security deposit less the sum owed to the landlord.

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: February 21, 2017

Residential Tenancy Branch