



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”).

The Landlord filed for an order to retain a portion of the security deposit and to recover the filing fee for the Application.

Both parties appeared and were affirmed, the hearing process was explained, the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to question the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to retain a portion of the security deposit?

Background and Evidence

According to the tenancy agreement submitted in evidence by the Landlord, this tenancy began on March 1, 2015, and required the Tenant to pay a security deposit of \$375.00, and pay monthly rent of \$750.00

In an addendum to the tenancy agreement, signed by the Tenant, the Tenant agreed to the following: “At the end of the tenancy, the rental property is to be cleaned, including but not limited to...carpets to be professionally cleaned.”

An Agent for the Landlord, different than the one who appeared at this hearing, met with the Tenant at the outset of the tenancy to perform the incoming condition inspection report. A copy of the incoming report dated February 19, 2015, was supplied in evidence.

The condition inspection report also contained the outgoing report and was dated August 31, 2016, which was the last day of the tenancy. On the move out report the Agent for the Landlord wanted to deduct \$163.80 for carpet cleaning. A note is made on the report saying the Tenant refused to sign the report and walked out.

The Agent for the Landlord who appeared at the hearing ("Agent T.V.") testified that the Tenant had attended the move out condition inspection report with a different, third Agent for the Landlord and it apparently did not go well as the Tenant refused to agree to the carpet cleaning.

The Agent for the Landlord argues that the Tenant agreed to have the carpets professionally cleaned at the end of the tenancy and requests a monetary order in the amount of \$163.80 for carpet cleaning, plus the filing fee.

In reply, the Tenant pointed out that the incoming report had a note on it stating, "...carpets not shampooed prior to MI". The Tenant testified that "MI" must have meant "move in", as the carpets in the rental unit were not clean when he moved in.

The Tenant testified that the Agent for the Landlord who performed the incoming report told him that since the carpets were not cleaned when he moved in, he would be credited for this at the end of the tenancy. The Tenant's position was that this meant he would not have to pay for carpet cleaning at the end of the tenancy, since the carpets had not been cleaned at the start of the tenancy.

The Tenant testified that at the time of the outgoing report he tried to explain to the Agent for the Landlord that the carpets were not cleaned at the start of the tenancy and the Agent at the time of the incoming report told him he would not be charged for carpet cleaning at the end of the tenancy. While acknowledging nothing was written down about this, the Tenant testified that he had thought the Landlord's Agent would stand by this promise to him.

The Tenant testified that at the outgoing report when he tried to explain this to the Landlord's Agent, the Agent began to get very agitated, raised her voice and then the Tenant decided he just had to walk away.

The Tenant further argued that he did not see why the carpets had to be cleaned at all, since these were not the same carpets that were in the rental unit at the outset of the tenancy.

The Tenant testified that during the course of the tenancy there was a flood in the rental unit and the carpets had to be replaced. He testified that he only lived in the rental unit for about four months following the replacement of the carpets and then moved out.

In reply, Agent T.V. argued that it did not matter whether or not the Tenant was in the rental unit for four months or one month, he had promised to have the carpets professionally cleaned and he should do this.

Analysis

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

Under section 3 of the addendum to the tenancy agreement the Tenant was required to have the carpets professionally cleaned at the end of the tenancy. Section 37(2)(a) of the Act required the Tenant to return the rental unit to the Landlord reasonably clean and undamaged, except for reasonable wear and tear.

As “reasonably clean” is a broad definition of what is required, the Branch has provided Policy Guidelines to clarify the responsibilities of both landlords and tenants under the Act. These Policy Guidelines are not only based on the Director’s interpretation of the Act, but also on standard practices and procedures which have been developed and adopted over the years in the normal course of the residential tenancy business.

Policy Guideline #1, sets out the following:

CARPETS

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. 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.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

[Emphasis added.]

Based on all of the above, the Act, the tenancy agreement and Policy Guideline 1, I find that the Tenant was not required to clean these carpets at the end of the tenancy.

The Policy Guideline section above speaks to tenancies where the Tenant had use of the carpets for at least a year. Based on the testimony of both parties, I find that the Tenant had use of new carpets in the rental unit for less than half year. The tenancy agreement has a no smoking clause in it, and the Landlord did not provide any evidence that the Tenant smoked in the rental unit or had pets in it. Furthermore, the Landlord provided insufficient evidence that the Tenant deliberately or carelessly stained the carpets during the tenancy, causing them to need cleaning. I also find that the evidence indicates the Tenant was not provided with a rental unit that had clean carpets at the outset of the tenancy. I find that to strictly enforce the carpet cleaning clause in these very particular circumstances would amount to allowing a landlord a grossly unfair outcome.

For these reasons, I find the Landlord has not established a claim for carpet cleaning and I order the Landlord to return the security deposit to the Tenant.

Pursuant to Residential Tenancy Branch Policy Guideline #17(C)(1), I order the Landlord to return the security deposit to the Tenant immediately. In support of this, I grant the Tenant a monetary order in the amount of \$375.00.

This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

Conclusion

The Landlord's claim against the security deposit is dismissed.

The Landlord must return the security deposit to the Tenant immediately. The Tenant is issued a monetary order for the security deposit which may be enforced in Provincial Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, 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: March 07, 2017

Residential Tenancy Branch