



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on September 19, 2016 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were personally served to each Tenant named on the Application. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that:

- the tenancy began on June 29, 2012;
- the tenancy ended on August 30, 2016;
- at the start of the tenancy the Tenant paid a security deposit of \$350.00;
- a condition inspection report was completed at the beginning and the end of the tenancy; and
- the Tenant provided a forwarding address, in writing, when the condition inspection report was completed on August 30, 2016.

The Landlord is seeking compensation, in the amount of \$62.69, for cleaning the carpets. In support of this claim the Landlord stated that:

- when the rental unit was inspected on August 30, 2016 there were no lights in the bedrooms so she could not properly inspect the condition of the carpets;
- when the condition inspection report was completed the Tenant agreed to pay for any damage the Landlord discovered at a later time;

- when she inspected the carpets again the next day she observed stains which caused her to conclude that additional cleaning was required;
- she rented a carpet cleaner and cleaned the carpets on September 07, 2016;
- when she spoke with the male Tenant regarding the stains she had found he agreed to pay for the carpet cleaning; and
- the Tenants refused to agree to pay for the carpet cleaning in writing.

The Landlord submitted a copy of the condition inspection report, which appears to be signed by the Landlord and the male Tenant. The report appears to have been completed in detail at the start of the tenancy but has little detail regarding the condition of the unit at the end of the tenancy. There is a note on the report that declares “everything seems fine on 8/30/16”.

On the condition inspection report the male Tenant seems to have declared that the Landlord is authorized to retain his \$350.00 security deposit. The Landlord stated that the Tenant signed this section of the report in case the Landlord found damage to the unit after the inspection was completed, in which case she could deduct the cost of the damage from the security deposit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord has submitted insufficient evidence to establish that the carpet in the rental unit required cleaning and I therefore dismiss her application for compensation for cleaning the carpet.

In determining that there is insufficient evidence to establish the carpet required cleaning, I was heavily influenced by the entry on the condition inspection that declares “everything seems fine on 8/30/16”.

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the condition inspection report does not indicate the carpet needed additional cleaning and the Landlord has not submitted evidence, such as photographs, that convinces me the carpets were stained, I find that I must rely on this report. In my view, the Landlord’s testimony, in the absence of any corroborating evidence, is not sufficient to refute the information on the condition inspection report.

Section 38(4)(a) of the *Act* authorizes a landlord to retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

On the basis of the undisputed evidence, I accept that after this tenancy ended the male Tenant verbally agreed to pay for cleaning the carpet after the Landlord determined that additional cleaning was required. As there is no evidence that the male Tenant agreed, in writing, to pay for the cost of cleaning the carpet after the Landlord determined that additional cleaning was required, I find that the Tenants did not given the Landlord written authority to retain any portion of the security deposit after August 30, 2016.

On the basis of the condition inspection report submitted in evidence and the absence of evidence to the contrary, I find that when the report was completed on August 30, 2016 the male Tenant agreed that the Landlord could retain \$350.00 from the security deposit. On the basis of the testimony of the Landlord, however, I find that when the male Tenant signed that report he was not actually agreeing to allow the Landlord to keep the \$350.00 deposit.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that when the male Tenant signed the final condition inspection report in which he agreed to allow the Landlord to keep the \$350.00 deposit he was actually agreeing that the Landlord could deduct all, or part, of the security deposit if she discovered damage to the rental unit after the inspection of the rental unit was complete.

I find that the Landlord has not established a right to retain any portion of the security deposit pursuant to section 38(4)(a) of the *Act*, on the basis of the condition inspection report that was completed on August 30, 2016. This conclusion is based, in part, on the fact that when this document was signed the parties had not agreed the rental unit was damaged or in need of cleaning. Section 38(4)(a) of the *Act* specifically declares that the agreement to retain an amount from the security deposit must be to pay a liability or obligation of the tenant. There is no evidence that on August 30, 2016 the male Tenant agreed that he owed money to the Landlord for cleaning the rental unit and I cannot, therefore, conclude that he intended to agree to pay for carpet cleaning on that date.

In determining that the Landlord has not established a right to retain any portion of the security deposit pursuant to section 38(4)(a) of the *Act*, on the basis of the condition inspection report that was completed on August 30, 2016, I was further influenced by the testimony of the Landlord, who stated that the Tenant signed the report authorizing her to keep the \$350.00 damage deposit in the event damage was discovered after the inspection was completed. Section 38(4)(a) of the *Act* specifically declares that the tenant may agree to allow the Landlord to retain an amount from the security deposit. As there is no evidence that the parties agreed a specific amount could be deducted from the security deposit, I cannot conclude that the Landlord had the right to remain

any amount. It is not sufficient, in my view, for a Landlord to arbitrarily determine how much can be retained from a deposit without first clarifying that amount with the Tenant.

I find that the Landlord has failed to establish the merit of the Application for Dispute Resolution and I dismiss her application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has failed established a monetary claim and she has failed to establish a right to retain any portion of the security deposit, I find that she must return the \$350.00 deposit to the Tenants. I therefore grant the Tenants a monetary Order for the \$350.00. In the event the Landlords does not voluntarily 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 15, 2017

Residential Tenancy Branch