



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MNSD, FF

Introduction

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

The male Landlord stated that on January 15, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlords submitted with the Application were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlords submitted Canada Post documentation that corroborates this testimony. The male Landlord stated that the service address was provided to the Landlords by the Tenant in January of 2017. 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 Tenant did not appear at the hearing.

On May 12, 2017 the Landlords submitted a copy of an invoice, a gas bill, and a dishonored cheque to the Residential Tenancy Branch. The male Landlord stated that these documents were sent to the Tenant, via email, although he cannot recall the date of they were sent. He stated that the Tenant did not respond to this email to confirm that she received the documents.

Sections 88 and 89 of the *Residential Tenancy Act (Act)* outline how documents must be served to tenants. These sections do not allow a party to serve evidence to the other party by email. As the evidence submitted to the Residential Tenancy Branch on May 12, 2017 was served to the Tenant by email and there is no evidence to establish that it was received by the Tenant, this evidence was not accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for cleaning the carpet, to compensation for unpaid rent, and to keep all or part of the security deposit?

Background and Evidence

The male Landlord stated that:

- the Tenant entered into a fixed term tenancy agreement, the fixed term of which began on February 01, 2015 and ended on January 31, 2017;
- the Tenant agreed to pay rent of \$2,469.00 by the first day of each month; and
- the Tenant paid a security deposit of \$1,200.00.

The Landlords submitted a tenancy agreement that corroborates this testimony.

The male Landlord stated that:

- on January 07, 2017 the person living in the lower portion of this residential complex told him that the Tenant had moved out of the rental unit;
- he went to the rental unit on January 11, 2017, at which time he found the keys to the unit and a forwarding address for the Tenant inside the rental unit;
- on January 16, 2017 the Landlords received an electronic message from the Tenant;
- the Tenant did not give notice of her intent to vacate prior to vacating the unit;
- the Tenant's rent cheque for January of 2017 was not honored by her financial institution; and
- the Tenant has not paid rent for January of 2017.

The Landlord is seeking compensation for unpaid rent for January of 2017.

The Landlord is seeking compensation, in the amount of \$194.25, for cleaning the carpet in the rental unit. The male Landlord stated that the carpet required cleaning at the end of the tenancy and that the Tenant agreed the cost of carpet cleaning could be deducted from her security deposit.

The Landlords submitted a copy of a text message from the Tenant, in which the Tenant wrote "you can take cleaning fees of the damage deposit" and "No I told you take it out of the damage deposit".

Analysis

On the basis of the undisputed evidence I find that the Tenant entered into a fixed term tenancy agreement, the fixed term of which ended on January 31, 2017, for which she agreed to pay rent of \$2,469.00 by the first day of each month.

On the basis of the undisputed evidence I find that the Tenant vacated the rental unit, without prior notice to the Landlord, on January 01, 2017. I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlords for rent that was due for January of 2017, pursuant to section 67 of the *Act*, as the Landlords experienced a loss as a result of the Tenant's non-compliance with the *Act*.

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.

On the basis of the undisputed evidence I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to leave the carpet in reasonably clean condition at the end of the tenancy. I find, however, that there is insufficient evidence to establish that the Landlords paid \$194.25 for cleaning the carpet. In reaching this conclusion I note that the carpet cleaning invoice submitted to the Residential Tenancy Branch was not accepted as evidence for these proceedings, and I am therefore unable to consider that document. As the Landlords have failed to establish that cost of cleaning the carpet, I dismiss their claim for cleaning the carpet.

In adjudicating this matter I have considered section 38(4)(a) of the *Act*, which stipulates that a landlord may 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. (Emphasis added)

On the basis of the undisputed evidence I find that the Tenant told the Landlords, via text message, that they could deduct the cost of cleaning the carpet from her security deposit. I find, however, that this text message does not give the Landlords the right to retain any portion of the security deposit pursuant to section 38(4)(a) of the *Act*, because the Tenant did not specify the amount the Landlord could retain. As the legislation requires the Tenant to specify the amount that can be retained from the security deposit, I find that the Landlords do not have the right to retain any portion of the security deposit pursuant to section 38(4)(a) of the *Act*.

I find that the Landlords' Application for Dispute Resolution has merit and that the Landlords are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$2,569.00, which includes \$2,469.00 in rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the Tenant's security deposit of \$1,200.00 in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlords a monetary Order for the balance \$1,369.00. In the event the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, 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: June 29, 2017

Residential Tenancy Branch