



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing convened as a result of Landlord's Application for Dispute Resolution wherein the Landlord requested to retain the Tenant's security deposit in the amount of \$1,000.00.

The hearing was conducted by teleconference on September 19, 2017. The Landlord and her translator, as well as an advocate on behalf of the Tenant called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Should the Landlord be entitled to retain the Tenant's security deposit?

Background and Evidence

The Landlord testified that the tenancy began July 2016 and ended December 31, 2016. Monthly rent was payable in the amount of \$2,000.00 and the Landlord holds a security deposit in the amount of \$1,000.00.

The Landlord confirmed that she did not perform a move in condition inspection report.

In the within action, and as noted on the Landlord's Application for Dispute Resolution, the Landlord indicated that she sought authority to retain the Tenant's security deposit in the amount of \$1,000.00.

During the hearing the Landlord stated that she hoped to recover the total sum of \$1,260.00 which she claimed to have paid for the deep cleaning of the rental unit. In support the Landlord provided a copy of a receipt dated January 1, 2017 for this sum. The Landlord testified that she was charged for 7 hours of cleaning at a rate of \$180.00 per hour for six people to clean the rental unit; she indicated that the amount was high due the fact it was January 1, 2017, and a statutory holiday such that the cleaning company brought in six cleaners to have the rental unit cleaned as quickly as possible.

The Landlord stated that at the time the Tenant moved out he told her to just hire a cleaning company to clean the rental unit.

The Landlord confirmed that she also did not perform a move out condition inspection.

In response to the Landlord's claim, the Tenant submitted that the Landlord failed to inspect the rental unit at the start of the tenancy. The Tenant's advocate further submitted that at the time the tenancy ended the Landlord did not indicate the unit required further cleaning. The Tenant's advocate stated that at no time did the Tenant tell the Landlord to simply hiring a cleaning company.

The Tenant's advocate submitted that the original cleaning receipt was handwritten, without a proper address and not written in English (a copy of which was provided in evidence), and that only after he questioned the authenticity of the receipt was a typed receipt issued which the Tenant submits is fraudulent. Further, the Tenant's advocate stated that the Landlord's receipt was inflated. In support the Tenant provided a quote from the same company whom the Landlord allegedly hired to clean the rental unit and they estimated the cleaning would cost \$250.00-300.00.

The Tenant also provided another estimate from another company wherein they were quoted \$395.00 for "deep cleaning" of the rental unit on a statutory holiday. The Tenant's advocate submitted that a reasonable amount was \$250.00-300.00 for the cleaning of the rental unit, if such deep cleaning was required, which the Tenant argued was not the case.

The Tenant applied for return of their deposit and by Decision dated April 6, 2017 the Arbitrator found the Tenant had provided the Landlord their forwarding address as of the date of the hearing on April 3, 2017. The parties confirmed that the Tenant made a further application for return of double the deposit paid as well as recovery of the filing fee, which is to be heard on October 4, 2017.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim. Section 67 of the *Act* also provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the *Act* or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the Landlord has the burden of proof to prove their claim.

Section 37(2) of the *Act* requires a tenant to leave a rental unit undamaged, except for reasonable wear and tear, at the end of the tenancy and reads as follows:

- 37** (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.
- (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.

The Landlord claimed the rental unit required cleaning at the end of the tenancy. The Tenant disputes this claim and submitted that he had the rental unit cleaned. Photos submitted by the Landlord were difficult to view and in some cases showed that minimal cleaning may have been required.

The Landlord claimed the sum of \$1,260.00 for the cost to “deep clean” the rental unit. The Tenant submitted that this was an inflated amount, as he obtained an estimate from the same company wherein the company estimates the cleaning will be \$250.00 to \$300.00.

The evidence indicates that initially the Landlord provided the Tenant with a receipt for cleaning which was handwritten, not on letterhead and not in English. The Tenant requested an official receipt and received another, which was also in the amount of \$1,260.00 for “deep cleaning from 8:00 a.m. to 3:30 p.m.”.

I am not satisfied, based on the evidence before me that the rental unit required cleaning as claimed by the Landlord. The Landlord’s translator confirmed that the Landlord moved into the rental unit after the tenancy ended. I find it likely that she requested a “deep clean” as she wanted the rental unit to be cleaned to a higher standard than that required by section 37. While she is entitled to clean the rental unit to a higher standard, such costs are not recoverable from the Tenant.

Further I am not satisfied that the amount claimed by the Landlord represents a reasonable cost to clean the rental unit. Section 7 of the *Act* requires the claiming party to do whatever is reasonable to minimize or mitigate their loss; for greater clarity I reproduce that section as follows:

Liability for not complying with this Act or a tenancy agreement

- 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.
- (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.

I find the \$1,260.00 claimed to be excessive in relation to the size of the rental unit as well as the condition the rental unit was left as evidenced by the photos. Based on the evidence submitted by the Tenant, I find it likely the Landlord could have hired cleaners at a more reasonable cost, and therefore I find she has not mitigated her losses.

In all the circumstances, I dismiss the Landlord's claim for monetary compensation for cleaning, as well as her claim to retain the Tenant's security deposit. The Landlord must return the Tenant's security deposit to them.

The circumstances of the move in and move out condition inspection report were not fully canvassed in this hearing. As such, I decline to make a further order with respect to the Tenant's claim for return of double the security deposit. The parties were cautioned to consider sections 24, 37 and 38 of the *Act*, as they relate to extinguishment. The determination of whether the Tenant is entitled to return of double the deposit shall be dealt with at the October 4, 2017 hearing of the Tenant's Application.

Conclusion

The Landlord's claim is dismissed in its entirety. The Landlord must return the Tenant's security deposit. The Tenant is granted a Monetary Order in the amount of \$1,000.00. The Order must be served on the Landlord and may be filed and enforced in the B.C. Provincial Court (Small Claims Division) 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 *Residential Tenancy Act*.

Dated: September 29, 2017

Residential Tenancy Branch