Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASTERA INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution. Only the male Tenant is named in the Landlord's Application for Dispute Resolution.

The female Agent for the Landlord stated that on September 07, 2017 the Application for Dispute Resolution, the Notice of Hearing, and evidence the Landlord submitted with the Application were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution in which they applied to keep all or part of the security deposit.

The female Tenant stated that on March 13, 2018 the Application for Dispute Resolution, the Notice of Hearing, and 4 documents the Tenants submitted with the Application were placed under the Landlord's door. The female Agent for the Landlord acknowledged receiving the Application for Dispute Resolution and the Notice of Hearing. She stated the 4 documents that were allegedly left under the door were not received.

The Tenants were advised that the 4 documents they submitted to the Residential Tenancy Branch could not be accepted as evidence for these proceedings as the

Landlord did not acknowledge receiving the documents. They were advised that the hearing would proceed and that they could refer to their documents during the hearing. One of the letters was read out during the hearing. They were advised that if, at any point during the hearing, they deemed it necessary for me to physically view their documentary evidence, they could request an adjournment for the purposes of re-serving their evidence to the Landlord. Prior to the conclusion of the hearing the male Tenant indicated that he did not believe an adjournment was necessary.

On March 15, 2018 the Landlord submitted 29 pages of evidence to the Residential Tenancy Branch. On March 16, 2018 the Landlord submitted another 6 pages of evidence to the Residential Tenancy Branch. The female Agent for the Landlord stated that this evidence was served to the Tenant, via registered mail, on March 15, 2018 and it was posted on their door on March 16, 2018. The Tenants acknowledged receiving this evidence and it was 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 keep all or part of the security deposit?
Should the security deposit be returned to the Tenants?

Background and Evidence

The Agents for the Landlord and the Tenants agree that:

- the tenancy began on September 01, 2016;
- the Tenants paid a security deposit of $400.00;
- a condition inspection report was jointly completed at the beginning of the tenancy; and
- the Tenants provided a forwarding address, in writing, in July of 2017 when they served the Landlord with their notice to end the tenancy.

The female Agent for the Landlord stated that the rental unit was vacated on August 31, 2017. The male Tenant stated the rental unit was vacated on September 01, 2017.

The female Agent for the Landlord stated that the Tenants verbally agreed to meet at 1:00 on August 31, 2017, for the purposes of completing the final condition inspection

report. She stated that when she arrived at 1:00 on that date the rental unit was not ready to be inspected.

The female Tenant stated that they did not agree to meet at 1:00 on August 31, 2017, for the purposes of completing the final condition inspection report. She stated that the Agent for the Landlord arrived at 1:00 on that date but the rental unit was not ready to be inspected.

The female Agent for the Landlord stated that the Tenants then verbally agreed to meet at 2:00 on August 31, 2017, for the purposes of completing the final condition inspection report. She stated that when she arrived at 2:00 on that date the rental unit was vacant and the keys had been left inside the unit.

The female Tenant stated that they were told the unit would be inspected at 2:00 on August 31, 2017 but she told the Agent for the Landlord they were not available at that time/date. She stated that when they left the unit her mother-in-law was still cleaning and she believes the mother-in-law left the keys in the unit.

The Agents for the Landlord and the Tenants agree that the Tenants were not served with written notice of the time/date of a final condition inspection.

The Landlord is seeking compensation, in the amount of $150.00, for general cleaning in the rental unit, $40.00 for cleaning the curtains, and $115.50 for cleaning the carpets. The male Agent for the Landlord described several areas in the unit that the Landlord contends required cleaning at the end of the tenancy. The female Agent for the Landlord stated that the curtains were not cleaned at the end of the tenancy.

The female Tenant stated that the rental unit was left in clean condition, with the exception of the carpets. She stated that she washed the curtains two days prior to the end of the tenancy. She stated that the Tenants agree to pay the $115.50 the Landlord is claiming for carpet cleaning.

The Landlord submitted photographs of the rental unit in support of the claim for cleaning. The photographs are black and white and are not of good quality.

Analysis

Section 35(2) of the *Residential Tenancy Act (Act*) stipulates that a landlord must offer a tenant at least two opportunities to participate in an inspection of the rental unit at the

end of the tenancy, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant's right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

On the basis of the undisputed evidence that the Tenants were not served with written notice of the time/date of a final condition inspection, I find that the Landlord failed to comply with section 35(2) of the *Act.*

Section 36(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 35(2) of the *Act.* As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2) of the *Act,* the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the security deposit.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security

deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenants.

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.

Section 37(2) of the *Act* requires tenants to leave a rental unit in reasonably clean condition at the end of the tenancy.

I find that the Landlord submitted insufficient evidence to establish that the rental unit was not left in reasonably clean condition at the end of the tenancy, with the exception of the carpet. In reaching this conclusion I determined there was insufficient evidence to corroborate the claim that the rental unit/curtains required cleaning and to refute the Tenants' testimony that the rental unit and curtains were left in reasonable clean condition, with the exception of the carpets.

While I accept that the photographs show the area behind the stove and refrigerator needed some cleaning, I find that they do not establish that the rental unit was not left in reasonably clean condition. In reaching this conclusion I was heavily influenced by the absence of photographic evidence that shows cleaning was required in any other area of the unit, including the curtains

As the Landlord has failed to establish that the rental unit was not left in reasonably clean condition, with the exception of the carpet, I dismiss the Landlord's claim for general cleaning and cleaning the curtains, in the amount of $190.00.

On the basis of the undisputed evidence I find that the carpets were not cleaned at the end of the tenancy. As the Tenants agreed to pay the $115.50 claim for cleaning the carpet, I find that the Landlord is entitled to collect this amount.

I find that the both Applications for Dispute Resolution have some merit and that both parties are responsible for paying the cost of filing their own Application for Dispute Resolution.

Conclusion

The Tenants have established a monetary claim of $800.00, which is double the security deposit.

The Landlord has established a monetary claim, in the amount of $115.50 for cleaning the carpet.

After offsetting the two claims I find that the Landlord must pay $684.50 to the Tenants. Based on these determinations I grant the Tenants a monetary Order for $684.50. In the event the Landlord 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: April 04, 2018

Residential Tenancy Branch