



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMNERT SERVICES BC
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

On June 24, 2019, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

K.H. attended the hearing as an agent for the Landlord and the Tenant attended the hearing as well. All parties provided a solemn affirmation.

K.H. advised that he served the Notice of Hearing and evidence package to the Tenant by registered mail and the Tenant confirmed that he received this package on or around June 26, 2019. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Notice of Hearing and evidence package.

The Tenant advised that he did not submit any evidence for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards these debts?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.H. advised that the tenancy started on May 1, 2017 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 14, 2019. Rent was established at \$1,650.00 per month, due on the first day of each month. A security deposit of \$825.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

While a copy of the move-in inspection report was not submitted, both parties agreed that a move-in inspection report was conducted on April 15, 2017, that there were no deficiencies noted at the beginning of the tenancy, and that the Tenant signed this report agreeing that the report fairly represents the condition of the rental unit.

Furthermore, a copy of the move-out inspection report was submitted as evidence and this indicated that there were no deficiencies noted at the end of the tenancy. The Tenant signed this report on June 14, 2019 indicating that he agreed that the report fairly represents the condition of the rental unit.

The Tenant's forwarding address was provided at the bottom of the move-out inspection report on June 14, 2019.

K.H. submitted that he had no issues with the Tenant, that the move-out inspection report reflected the condition of the rental unit at the end of the tenancy, and that when the Landlord inspected the rental unit after the Tenant had vacated, she determined that there was additional cleaning and carpet cleaning that was necessary. As a result, she asked K.H. to file for Dispute Resolution seeking compensation in the amount of **\$315.00** for general cleaning and carpet cleaning. A receipt was submitted to support this cost. However, K.H. was not aware what parts of the rental unit specifically needed cleaning, other than the carpet, how many hours were spent cleaning, or how much this cleaning company charged per hour. Other than the invoice, there was no evidence submitted to corroborate the claims the Landlord was seeking.

The Tenant advised that he supplied the Landlord with a receipt for \$130.00 for carpet cleaning, and K.H. acknowledged receiving this. As well, he stated that he spent the better part of a week cleaning the rental unit, and the move-out inspection report reflects this.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenant, pursuant to section 38(6) of the *Act*.

The undisputed evidence is that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 14, 2019 and that the forwarding address in writing was provided to the Landlord on the same day. As the Landlord made her Application on June 24, 2019, she made this Application within the 15-day frame to claim against the deposit. As the Landlord was entitled to claim against the security deposit still, and as she complied with Section 38(1) of the *Act* by making a claim within 15 days, I find that she has complied with the requirements of the *Act* and therefore, the doubling provisions do not apply.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for the costs associated with general cleaning and cleaning of the carpet, I find it important to note that all parties agreed that there were no deficiencies in the condition of the rental unit at the start or end of tenancy, and the condition inspection reports confirm as much. While it is possible to consider that the condition of the rental unit may have differed from that of the reports, a preponderance of evidence must be submitted to contradict the state documented in the reports.

However, based on the sparse evidence provided supporting the alleged condition of the rental unit according to the Landlord, I do not find that there is a preponderance of evidence submitted that would depict anything contrary to what the move-out inspection report indicated. As a result, I am not compelled that the Landlord's minimal evidence should be given more consideration than the substantive weight of the signed move-out inspection report. Consequently, I am not satisfied that the Landlord has substantiated her position, and I dismiss her claim in its entirety.

As the Landlord was not successful in her claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 38 and 67 of the *Act*, I Order the Landlord to repay the Tenant's security deposit and I grant the Tenant a conditional Monetary Order in the amount of **\$825.00** should the Landlord not return this amount.

Conclusion

The Landlord's Application is dismissed without leave to reapply. The Tenant is provided with a Monetary Order in the amount of **\$825.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 8, 2019

Residential Tenancy Branch