



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Exclusive Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: MNSD, FF
 For the landlord: MNR, FF

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

On January 1, 2021, the tenant applied for the following:

- a repayment of his security deposit; and
- to recover the cost of the filing fee.

On January 11, 2021, the landlord applied for the following:

- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The tenant, the landlord's agent (landlord) and two witnesses, RK and GM, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

Each party confirmed receiving the other's evidence and application for dispute resolution prior to the hearing.

The witnesses were excused at the beginning of the hearing to wait their turn to testify. Thereafter the tenant and the landlord were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the written tenancy agreement submitted by both parties shows that the landlord's agent here was not named as a landlord, although named as such in the tenant's application. The name listed in the written tenancy agreement was a property management company, and as a result, I have amended the tenant's application and listed the landlord as the responsible party on the style of cause page, as reflected on the landlord's application for dispute resolution.

Additionally, I find it clear the landlord made an error in their application. The landlord applied for a monetary order for unpaid rent; however, their evidence and testimony reflected that instead their claim related to a request for cleaning costs. I therefore find it appropriate to amend the landlord's application, to reflect the appropriate issue.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to a repayment of his security deposit and to recover the cost of the filing fee?

Is the landlord entitled to monetary compensation from the tenant and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement filed in evidence shows a tenancy start date of January 15, 2018, for a beginning monthly rent of \$1,375, and a security deposit in the amount of \$687.50, being paid by the tenant to the landlord.

The undisputed evidence is that the tenancy ended on December 31, 2020 and the landlord has retained the tenant's security deposit.

Tenant's evidence in support of his application -

The tenant submitted that he provided his written forwarding address to the landlord in his notice to vacate, on November 30, 2020, and again, on January 4, 2021, on the Residential Tenancy Branch (RTB) form used as proof of service for a tenant providing a forwarding address.

The tenant submitted that the landlord informed him on the day of the move-out inspection, she was deducting \$100 from his security deposit; however, he did not agree to this deduction.

The tenant confirmed that the landlord has not repaid any portion of the tenant's security deposit.

The tenant's monetary claim is \$687.50, the amount of the security deposit, and \$100 for recovery of his filing fee.

Landlord's response to the tenant's application -

The landlord confirmed not returning the tenant's security deposit, due to their application for dispute resolution.

Landlord's evidence in support of their application -

The landlord's monetary claim is \$100 for cleaning, \$100 for recovery of their filing fee, and \$16.12 for registered mail costs.

In support of their claim, the landlord submitted that the rental unit required cleaning after the tenancy ended. In particular, there were three light fixtures, the top of the bathroom cabinet above the sink, all light switches, plugs, water sill, ceiling fan, mirrored

closet door, floor, floor tile, and wall by the toilet were dirty. According to the landlord, the light fixtures were missing four bulbs.

In response to my inquiry, the landlord said that the rental unit was “spotless” when a tenant moves into a rental unit, and that she explains to each tenant that she expects it to be as clean as when they moved in. The landlord then said that obviously she did not expect “a place to be 1000%”.

I asked multiple times if the landlord could provide a breakdown of her \$100 claim, and she would not. Instead, the landlord testified several times that the tenant would not sign the security deposit statement, allowing for a \$100 deduction, as he was required to do. The landlord submitted that the tenant was required to sign their separate security deposit form in order to have the security deposit returned.

Filed in evidence by the landlord was a move-in condition inspection report (Report), the move-out cleaning list, the separate security deposit worksheet, emails with the tenant, photos, and witness letters.

Landlord’s witnesses –

Witness, RK, referred to his letter filed in evidence. RK wrote that the tenant’s cleaning “did not demonstrate an attempt to meet the condition of the suite when originally occupied by the exiting tenant”. Further, RK wrote, “Certainly extra cleaning will be required before the suite can be occupied by a new tenant”.

At the hearing, RK testified that the tenant did not leave the rental unit in the same condition as he found it.

Witness, GM, said she was a witness to the move-out inspection and noticed that the rental unit was not clean in some areas. GM said that the tenant became agitated when the landlord finished the inspection and began to explain to the tenant that she was deducting \$100 from his security deposit. The tenant then became loud and argumentative.

Tenant’s response –

The tenant said that the rental unit was very clean when he vacated, although the rental unit was not spotless when he moved in. The tenant said that he did a thorough clean when he moved in, and in particular, cleaned out under the sink and the countertops.

The tenant submitted sufficient evidence that right away, the landlord said she would be deducting \$100 from the security deposit and that he did not understand as the rental unit did not need further cleaning.

The tenant referred to his photographs and video filed in evidence.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenant's application -

Under section 38(1) of the Act, a landlord is required to either repay a tenant's security deposit or to file an application for dispute resolution to retain the deposit within **15 days of the later of receiving the tenant's forwarding address in writing or at the end of a tenancy.** [My emphasis]

In this case, the undisputed evidence is that the tenancy ended on December 31, 2020, and the tenant filed his application seeking repayment of his security deposit the next day, or January 1, 2021.

Pursuant to paragraph 38(1)(a), as the tenancy had ended on December 31, 2020, the day before his application was filed, the landlord's obligation to return the deposit had not yet been triggered until January 15, 2021. During this time, the landlord may file an application.

For the above reason, I find the tenant's application was premature when he made it and as a result, I **dismiss** the tenant's application, without leave to reapply, as his security deposit will be dealt with in the landlord's application.

Landlord's application –

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires

that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to substantiate their cleaning claim on a balance of probabilities.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean and undamaged, except for reasonable wear and tear.

Reasonable wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Tenants are not responsible for cleaning of the rental unit to bring the premises to a "spotless condition", the condition upon which they moved in, or move-in ready for the next tenant.

Here, I find the landlord clearly expected the tenant to leave the rental unit in a "spotless" condition, a word to which she referred to many times in the hearing and in her evidence. I interpret the word "spotless" to be in an immaculate condition and move-in ready for the next tenant. This expectation is contrary to the Act.

I have reviewed the photographs submitted by the respective parties, although the landlords' photographs show very minor deficiencies in some items, the landlord did not provide photographs of the entire rental premises to show the rental unit was not left in its totality reasonably clean. The landlord only provided extremely up-close photographs, one showing a hair, which had to be circled to set off the concern in the photograph. Another photograph appears to show the bathroom fan motor underneath the cover.

Overall, I accept that the tenant's photographs and video documented that the tenant reasonably and properly cleaned the rental unit and that the rental unit was left reasonably clean. For these reasons, I find the landlord submitted insufficient evidence to show that the rental unit was not left reasonably cleaned and undamaged, except reasonable wear and tear.

Therefore, I dismiss the landlord's application for cleaning and to recover the cost of the filing fee, without leave to reapply.

As to the landlord's claim for registered mail expenses for this hearing to the tenant, the Act does not provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee. The claim of \$16.12 is dismissed as well.

As I have dismissed the landlord's application, I order the landlord to repay the tenant's security deposit of \$687.50, immediately.

To give effect to this order, I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount \$687.50.

Should the landlord fail to pay the tenant this amount immediately, the monetary order must be served upon the landlord for enforcement, and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is cautioned that costs of such enforcement are recoverable from the landlord.

Other matters and Issues; cautions and orders to the landlord -

The landlord was advised during the hearing that a security deposit is a payment made by the tenant to the landlord, which is then held in trust for the duration of the tenancy. At the end of the tenancy, the landlord is not allowed under the Act to make deductions, without legal authority to do so. The landlord is required to either return the tenant's security deposit or to file an application claiming against it.

The evidence presented by the landlord, the "moving out cleaning list", issued to the tenant on November 30, 2020, informed the tenant that if the tenant was unable to clean the rental unit, the landlord would charge \$25 per hour and that the cleaning service costs "will be deducted from your Security Deposit". Further on this statement, the landlord writes that without his signature on the Security Deposit statements, "we cannot process your Security Deposit".

I informed the landlord at the hearing of their obligation to comply with the Act and to handle the security deposit in the proper manner. A landlord cannot force, or attempt to force, a tenant to sign away a portion of their security deposit, as appears to be the case here.

I find support in this statement in reviewing the landlord's evidence of the emails between the parties. In one email to the tenant, the landlord reiterated her assumed right to make deductions from the tenant's security deposit, as per the moving out cleaning list. This email also informed the tenant that she expected "the suite to be in the same Spotless and Clean condition beyond normal wear and tear". These landlord requirements are contrary to the Act.

In this particular email, dated January 5, 2021, the landlord described that during the inspection, "you kept following me around while (*witness, GW*) was having a civil

conservation with you” and described that the tenant was “hovering” near the landlord. The landlord also wrote that once “the inspection was completed I started to tell you that I was deducting \$100 off your security deposit and you started to freak out asking why so much”.

I find this email clearly describes that the landlord intended to make the inspection on her own and without the tenant’s participation. Additionally, after reviewing the Report, the landlord wrote over the section where the tenant could note their agreement or disagreement and to state why. **The tenant has the legal right to participate in the move-out inspection and record their assessment of the rental unit at the end of the tenancy on the Report.**

I caution the landlord that her actions at the inspection as described above are contrary to the Act and Regulations. If the landlord should have any questions about her obligations and requirements under the Act, she is encouraged to speak with staff at the Residential Tenancy Branch (RTB).

Under section 62(3) of the Act, the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

I therefore order the landlord to ensure that their documents come into compliance with the landlord’s obligations under the Act so that misinformation about a tenant’s security deposit is not given to future tenants.

This means that the landlord should not misinform any tenant that automatic deductions will be made from their security deposit, that their security deposit will be held until they sign away, or feel compelled to sign away their right to their security deposit, or that the rental unit must be left in any condition other than reasonably clean.

The landlord should be aware that the RTB now has a Compliance and Enforcement Unit to oversee continued violations of the Act by landlords and tenants.

Conclusion

The tenant’s application was dismissed, without leave to reapply.

The landlord’s application is dismissed, without leave to reapply.

The landlord is ordered to repay the tenant's security deposit of \$687.50 immediately. The tenant is granted a monetary order in that amount.

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: May 10, 2021

Residential Tenancy Branch