



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on October 4, 2021 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage, compensation, or loss; and
- an order to retain the security deposit;

The Landlord, the Landlord's Agent, and the Tenant attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As there were no issues raised, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage, compensation or loss, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following: the tenancy began on November 1, 2016. Near the end of the tenancy, the Tenant was required to pay rent in the amount of \$1,451.28 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$640.00 which the Landlord continues to hold. The tenancy ended on August 31, 2021. The Tenant provided the Landlord with his forwarding address by Registered Mail on November 5, 2021. The Landlord confirmed receipt on November 8, 2021.

The Landlord is claiming \$348.75 in relation to loss that they incurred as a result of further cleaning required in the rental unit at the end of the tenancy. The Landlord stated that the carpets in the rental unit were stained and required to be professionally cleaned. The Landlord stated that the Tenant had employed the services of a professional carpet cleaner, however, the Landlord stated that they did a poor job, which required the Landlord to employ his own carpet cleaning service at a cost of \$288.75. The Landlord provided pictures of the stained carpet as well as the invoice in support.

The Landlord stated that he was also required to clean the rental unit for two hours and is seeking compensation for loss in the amount of \$30.00 per hour, totalling \$60.00. The Landlord provided pictures to demonstrate that the rental unit required further cleaning.

The Tenant responded by stating that he hired a carpet cleaning service and provided an invoice in support. The Tenant stated that the rental unit was left clean and provided pictures in support.

The parties agreed that they had scheduled a move out condition inspection on August 31, 2021 at 5:00PM. The parties agreed that at 1:00PM the Tenant notified the Landlord that they would not be attending, as the Tenant felt as though the Landlord should not have entered the rental unit prior to the inspection taking place. The Tenant stated that no further opportunities to complete the inspection were offered. As such, the Tenant stated that the Landlord was not permitted to retain the Tenant's security deposit. The Landlord stated that they had a new tenant moving into the rental unit the following morning, therefore, it was important for the Tenant to attend the previously scheduled inspection time.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

With respect to the Landlord's claim for carpet cleaning, I am satisfied based on the Landlord's pictures of the carpet at the end of the tenancy, that the carpets did require further cleaning. The Landlord's pictures were clear and close up showing the stained carpet, as opposed to the Tenant's pictures which were taken from a distance and showed the entire room. As such, I award the Landlord compensation for loss incurred in the amount of **\$288.75**.

The Landlord is also claiming \$60.00 for two hours of additional cleaning in the rental unit at the end of the tenancy. While the Tenant provide pictures from a distance, I find that the Landlord's pictures of the rental unit were specific to the areas which required further cleaning. I find that the Tenant did not leave the rental unit reasonably clean at the end of the tenancy, and therefore award the Landlord **\$60.00** for cleaning.

With respect to the Tenants' claim that the Landlord was prevented from retaining the Tenant's deposit as they were not provided with two opportunities to inspect the rental unit, section 38(1) of the *Act* requires a landlord to repay deposits or make an application to keep them by making a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. If a landlord fails to repay deposits or make a claim against them within 15 days, section 38(6) of the *Act* confirms the tenant is entitled to receive double the amount of the deposits.

In this case, the Tenant's argument that the Landlord extinguished their right to claim against the security deposit has no effect, as extinguishment under either sections 24 and 36 of the *Act* only relate to claims for damage to the rental unit. In this case, the Landlord's claims relate to financial losses, as a result, whether they extinguished or not has no bearing on the outcome of the current Application.

The Landlord has established an entitlement to monetary compensation for loss in the amount of \$348.75. I find it appropriate in the circumstances to order that the Landlord retain \$348.75 from the \$640.00 security deposit held in satisfaction of the claim ($\$640.00 - \$348.75 = \$291.25$).

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary order in the amount of \$291.25, which represents the remaining balance of their security deposit less the previously mentioned deductions.

Conclusion

The Landlord has established an entitlement to monetary compensation for loss in the amount of \$348.75 which has been deducted from the security deposit. The Tenant is granted a monetary order in the amount of \$291.25 which represents the remaining balance of the Tenant's security deposit. The order should be served to the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 9, 2022

Residential Tenancy Branch