



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute resolution, in which the Tenant has made application for the return of double her security deposit and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's application, is whether the Landlord is entitled to a monetary order for cleaning the rental unit; for a monetary order for loss of revenue; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's application, is whether the Tenant is entitled to the return of double the security deposit she paid and to recover the filing fee for the cost of this Application for Dispute Resolution.



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Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on December 01, 2007 and ended on February 02, 2009. The parties agree that they had a written tenancy agreement; that the Tenant was required to pay monthly rent of \$550.00 at the end of the tenancy; and that the Tenant paid a security deposit of \$275.00 on November 07, 2007.

The Agent for the Tenant stated that she wrote the Tenant's forwarding address on the back of the Agent's business card and that the Tenant attempted to give that card to the Assistant Building Manager on January 09, 2009, at which time the Assistant Building Manager advised her that she did not need her forwarding address.

The Assistant Building Manager stated that the Tenant did not attempt to give her a forwarding address on January 09, 2009. She stated that she did not have a forwarding address or phone number for the Tenant until February 13, 2009, at which time the Landlord obtained a phone number for the Tenant through call display. She stated that the Tenant and her father attended her office on February 17, 2009, at which time she returned the security deposit in the amount of \$69.02. She stated that the Tenant attempted to give her a forwarding address at that time, at which time she advised the Tenant that she no longer required it.

The Witness for the Tenant, who is the Tenant's father, stated that he went with his daughter to the office on February 08, 2009 or February 09, 2009; he observed his daughter attempt to give the Assistant Building Manager a business card with the Tenant's forwarding address written on the reverse; and he observed the Assistant Building Manager refuse to accept the card. He agreed that he also came to the office when a portion of the Tenant's security deposit was returned to her.

The Witness for the Tenant confirmed on three occasions that his daughter attempted to give the Assistant Building Manager her forwarding address on February 08, 2009 or February 09, 2009, even after it was pointed out that his daughter believed the incident occurred on January 09, 2009.

The Agent for the Landlord and the Tenant agree that on January 08, 2009 the Tenant provided the Landlord with written notice of her intent to vacate the rental unit in thirty days. The Landlord is seeking compensation, in the amount of \$550.00 for loss of revenue for the month of February due to the inadequate notice provided. The Agent for the Landlord stated that the rental unit was re-rented on April 01, 2009.



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The Agent for the Tenant argued that the Tenant did provide one month's notice of her intent to vacate and that the Tenant vacated the rental unit because there were deficiencies with the rental unit.

The Landlord is seeking compensation, in the amount of \$72.00, for the cost of cleaning the rental unit. The Landlord submitted a letter from an individual who regularly cleans rental units for the Landlord. She stated that the rental unit required cleaning and she spent four hours cleaning the unit. The Tenant submitted a copy of a receipt from the person who cleaned the rental unit, which is dated February 14, 2009.

The Landlord submitted a copy of a Condition Inspection Report, that was completed on February 02, 2009, which indicates that the rental unit and carpet required cleaning, and that property was left on the patio. This Inspection Report was not signed by the Tenant. The Agent for the Landlord stated that the Landlord was unable to schedule a time for a condition inspection with the Tenant because they did not have a forwarding address and the phone number they had for the Tenant was not in service.

The Tenant stated that the rental unit was clean when she vacated the rental unit.

The Landlord is claiming compensation, in the amount of \$63.00, for cleaning the carpet in the rental unit. The Landlord submitted a copy of the tenancy agreement which clearly states that the carpets must be professionally cleaned at the end of the tenancy. The Tenant submitted a copy of a receipt, dated February 16, 2009, which indicates that the Landlord had the carpets professionally cleaned.

The Agent for the Tenant stated that the carpets were not professionally cleaned because the Tenant believed that the carpets were being replaced. The Agent for the Landlord stated that only the carpets in the lower portion of the rental unit required cleaning, as the carpets in the upper portion were replaced.

The Landlord is claiming compensation, in the amount of \$62.75, for disposing of property left on the patio. The Landlord submitted a copy of a note from an individual who reported that he removed several items from the patio. The Tenant submitted a copy of a receipt for the cost of removing the items.

The Agent for the Landlord agrees that a barbecue was discarded, although she contends it was in good condition and should not have been discarded. She argued that the Landlord did not remove chairs or planters from the patio.

Analysis

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In regards to the date that a forwarding address was provided, the burden of proof rests with the Tenant as the Tenant is claiming compensation for not receiving the security back in accordance with the *Act*.

I find that the Tenant submitted insufficient evidence to establish that she attempted to provide the Landlord with her forwarding address, in writing, on January 09, 2009. In reaching this conclusion, I was strongly influenced by the contradictory evidence provided by the Agent for the Tenant and the Witness for the Tenant. I specifically note that the Agent for the Tenant stated that the Tenant attempted to give the Landlord her forwarding address on January 09, 2009 while the Witness stated, on three occasions, that this occurred on February 08, 2009 or February 09, 2009. Conversely, the Assistant Building Manager agreed that she refused to accept the Tenant's forwarding address, but consistently reported that this occurred on February 17, 2009.

In the absence of evidence that clearly establishes that the Tenant provided a forwarding address in writing prior to February 17, 2009, I find that the Tenant attempted to provide her forwarding address, in writing, on February 17, 2009. Residential Tenancy Branch records show that the Landlord applied to retain the Tenant's security deposit on February 26, 2009.

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 the circumstances before me, I find that there is insufficient evidence to establish that the Landlord failed to comply with section 38(1), as the Landlord did file an Application for Dispute Resolution nine days after the Tenant attempted to provide her forwarding address.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have not found that the Landlord failed to comply with section 38(1) of the *Act*, I cannot conclude that the Landlord must pay the Tenant double the security deposit that was paid. On this basis, I dismiss the Tenant's application for the return of double her security deposit.

I find that the Tenant failed to comply with section 45 of the *Act* when she failed to provide the Landlord with written notice of her intent to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice **and is the**

day before the date that rent is due. I further find that the late notice to vacate prevented the Landlord from finding new tenants for the rental unit, and that it resulted in a loss of rental revenue for the month of February of 2009. On this basis, I find that the Tenant must compensate the Landlord for the loss of revenue that resulted from the late notice, in the amount of \$550.00.

I find that the Tenant failed to comply with section 37(2) of the *Act* when she failed to clean the rental unit at the end of the tenancy. I favoured the Agent for the Landlord's evidence over the Tenant's evidence in regards to the cleanliness of the rental unit, because the Landlord's evidence was supported by a letter from the person who actually cleaned the rental unit, by the individual who removed personal items from the patio, and by the Condition Inspection Report that was completed on February 02, 2009. Although the Condition Inspection Report was not signed by the Tenant, it is consistent with the evidence provided by the two people who cleaned the rental unit.

I find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to leave the rental unit in reasonably clean condition. In these circumstances, I find that the Landlord is entitled to \$72.00 compensation for general cleaning and \$62.75 for removing personal items from the patio.

I also find that the Landlord is entitled to compensation, in the amount of \$63.00, for having the carpets professionally cleaned. In reaching this conclusion, I was strongly influenced by the terms of the tenancy agreement that required the Tenant to clean the carpets at the end of the tenancy, by the evidence that shows the Landlord had carpets in the rental unit cleaned, and by the absence of evidence to show that the Tenant cleaned the carpets.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the fee from the Tenant for filing this Application for Dispute Resolution. I find that the Tenant's application has largely been without merit, and I therefore dismiss her application to recover the fee from the Landlord for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$797.75, which is comprised on \$550.00 for loss of revenue, \$197.75 in cleaning costs, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.



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I hereby authorize the Landlord to retain the portion of the security deposit that has not yet been returned to the Tenant, in the amount of \$205.98, in partial satisfaction of this monetary claim. I further authorize the Landlord to retain interest from the security deposit, in the amount of \$4.76, in partial satisfaction of this monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the amount \$587.01. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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 *Residential Tenancy Act*.

Dated: May 11, 2009.

Dispute Resolution Officer