

## **DECISION**

**Dispute Codes**      MNSD, FF

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord applied for an order to retain the security deposit and recover the filing fee from the tenant for the cost of this application. The tenant applied for return of the security deposit.

At the outset of the hearing, the landlord applied to amend the application to include a claim for damage to the unit, site or property. The evidence does not change, and no additional evidence is required for that claim, and therefore, the tenant is not prejudiced by the application, and I therefore order that the Landlord's Application for Dispute Resolution be amended to include an application for a monetary order for damage to the unit, site or property.

The parties gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

### **Issues(s) to be Decided**

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the tenant entitled to return of the security deposit?

### **Background and Evidence**

This fixed term tenancy began on June 1, 2008 and then reverted to a month-to-month tenancy on November 30, 2008, and ended on January 31, 2010. Rent in the amount of \$1,000.00 was payable in advance on the 1<sup>st</sup> day of each month, as well as \$60.00 per month for parking. On April 28, 2008, the landlord collected a security deposit in the amount of \$500.00 as well as a pet damage deposit of \$500.00 from the tenant.

The tenant testified that upon moving into the unit, the landlord gave the tenant a condition inspection report and advised him to go through the unit, amend the checklist condition inspection report and return it to the landlord. The tenant further testified that a door was cracked and had been repaired with glue and nails. Further, the oven didn't work, which was not fixed until months into the tenancy despite several requests by the tenant. On June 6, 2008, the tenant returned the checklist back to the landlord and then noticed those issues. He stated that he asked the landlord to add those issues to the checklist, but it was never done.

The tenant gave notice to move out of the unit and a forwarding address was also in that notice, given December 18, 2009.

A move-out condition inspection report was presented to the tenant, but the form had a lot of "white-out" and corrections on it, and he refused to sign the form. He stated that the unit needed painting, but he paid \$80.00 for carpet cleaning and provided a receipt for that to the landlord. The landlord also claimed \$30.00 for drapery cleaning, but the tenant testified that there were no drapes in the unit at all, and that all vertical blinds were cleaned prior to moving out of the unit. He stated that the claim by the landlord for \$40.00 for cleaning a mess in the hallways was not his responsibility; the mess was made by an exterminator. He further testified that he is not a smoker, nor is his partner.

The tenant also testified that when he moved in he paid a \$10.00 deposit for a laundry card and returned the card at the end of the tenancy, but did not get his deposit back from the landlord.

The landlord's agent testified that the Accounts Payable section of the company advised her that a cheque was issued on February 15, 2010 in the amount of \$691.94, but the tenant testified that he did not receive it. The tenant stated that he did receive the evidence package from the landlord, so they had an address, but he did not receive the cheque.

The landlord's agent testified that deductions were made when the cheque was written for:

- \$125.00 for painting the unit;
- 43.75 for painting materials;
- 80.00 for carpet cleaning;
- 30.00 cleaning blinds;
- 40.00 for general cleaning of the unit;
- and \$10.00 was credited for the return of the laundry card.

The landlord provided no evidence that the unit required those repairs and cleaning, nor any receipts for such expenses.

### **Analysis**

I find that the landlord has failed to prove a claim against the tenant, and I dismiss the landlord's application in its entirety.

I further find that the tenant has proved his claim, and with no evidence before me that the cheque issued has ever been received by the tenant or cashed, I find that the tenant is entitled to full return of the security deposit and pet damage deposit, and interest.

### **Conclusion**

The landlord's application is hereby dismissed without leave to reapply.

I order that the landlord return the security deposit in the amount of \$500.00 and the pet damage deposit in the amount of \$500.00 and \$10.16 in interest to the tenant. Since the tenant has been successful with his claim, the tenant is also entitled to recover the filing fee from the landlord in the amount of \$50.00.

I order that the landlord pay to the tenant the sum of \$1,060.16. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: June 09, 2010.

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Dispute Resolution Officer