



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order to keep all or part of the security deposit and to recover the filing fees associated with this application.

The tenant made a cross application for dispute resolution for double the amount of return of the security deposit and to recover the filing fees associated with his application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to submit at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and for what amount?

Is the tenant entitled to a Monetary Order, and for what amount?

Background and Evidence

The rental unit consists of a single family house located in Coquitlam. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on October 1st, 2009 and ending on September 30th, 2010 at a rate of \$1400.00 payable on the first of each month. The tenant paid a security deposit in the amount of \$700.00. Inspection condition reports were not completed at the start or the end of the tenancy.

Due to repairs required to the rental unit, the parties mutually agreed to end the tenancy prematurely on September 3rd, 2010.

K.L, property manager for the landlord, testified that the tenant did not professionally clean the carpets as specified in the tenancy agreement. Although the tenant testified that he rented a shampooer, upon reviewing the agreement he agreed that it had not been done professionally. K.L. also stated that the blinds were not clean, and his documentary evidence included a quote of \$200.00 to clean the blinds, and a quote of \$256.48 to clean the carpets professionally. The tenant stated that the blinds were vacuumed and the unit was left in a better condition than when he moved in.

K.L. stated that as property manager, he only provided quotes and that he did not know what the landlord eventually decided to do or what was the final cost for cleaning.

Turning to the tenant's claim, the tenant testified that he wanted double the return of his security deposit along with the filing fee. K.L. had no further evidence to submit regarding the tenant's application. The tenant provided evidence that although the last tenancy agreement started in 2009, he had been at the rental unit since February 7th, 2004. The tenant is seeking interest calculated within his monetary claim since that time.

Analysis

Section 35 provides in part that the landlord must offer the tenant at least 2 opportunities, as prescribed, for an inspection, and that the landlord must complete a condition inspection report in accordance with the regulations.

Section 36(2) of the *Residential Tenancy Act* also provides in part that if a landlord does not comply with Section 35, his right to claim against a security deposit is extinguished.

The tenant rented a shampooer and agreed that the carpets were not professionally cleaned as required by the tenancy agreement. However, K.L. provided no supporting evidence confirming whether the landlord did have the carpets professionally cleaned, and at what cost. Absent that evidence and without condition inspection reports as required by statute, I cannot make a decision on the strength of two quotes and the landlord's claim is dismissed in its entirety.

Turning to the tenant's claim:

Section 38(1) of the *Residential Tenancy Act* states:

- *"Except as provided in subsection 3 or 4(a), within 15 days after the later of*
 - (a) The date the tenancy ends, and*
 - (b) The date the landlord receives the tenant's forwarding address in writing,**the landlord must do one of the following:*
 - (c) Repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) Make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

The tenancy ended September 3rd, 2010, and the landlord submitted an application for dispute resolution on September 14th. Since the landlord was in compliance with the statutory timeline, the tenant is not entitled to claim double the amount of the security deposit. For the reasons stated above, I find that the tenant is entitled to the return of his security deposit with interest.

Conclusion

The tenant has established a claim totalling \$724.77 (\$700.00 plus interest). Since he was successful, I also award the tenant recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I award the tenant a Monetary Order for the sum of \$774.77.

This Order may be registered in the 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: January 18, 2011.

Residential Tenancy Branch