# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes    For the landlord: MND, MNSD, FF
For the tenant:  MNSD, FF, O

Introduction

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

The landlord applied for authority to retain the tenant's security deposit and pet damage deposit, a monetary order for damage to the rental unit and for recovery of the filing fee.

The tenant applied for a monetary order for a return of her security deposit and pet damage deposit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.  Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties acknowledged receipt of the other parties' evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.  However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit and to recover the filing fee?

Is the tenant entitled to a monetary order in the amount of her security deposit and pet damage deposit, other costs and to recover the filing fee?

Background and Evidence

The tenancy started on or about November 1, 2009 and ended on or about March 1, 2012, according to the landlord.

The tenant paid a security deposit of $1200.00 just prior to the beginning of the tenancy, and a pet damage deposit of $300.00 on or about March 1, 2010.

The tenant stated that she took possession of the upper suite on November 1, 2009, but not occupancy until March 1, 2010. The tenant said that the tenancy ended on February 28, 2012, and that the final inspection did not take place for several days, despite her request for an earlier inspection.

Monthly rent at the beginning of the tenancy was $1600.00 for the upper suite, and monthly rent was increased to $2400.00 when the tenant took occupancy of the entire house.

The landlord confirmed that there was a move-in condition inspection report for the upper suite, but when the tenant took over the lower suite in March 2010, there was not a condition inspection done with the tenant for the lower suite.

The landlord stated that at the final inspection on or about March 3, 2012, she noticed numerous stains and spots; additionally the landlord said that there was a strong smell coming from the carpet.

The landlord said that she discussed this with the tenant and requested a copy of the carpet cleaning receipt.

The landlord stated that she was not provided the receipt, and that it was necessary for her to hire a carpet cleaning company to provide the final clean prior to a new tenant coming into the rental unit.

The landlord's monetary claim is $304.64, for the cost of the carpet cleaning.

The landlord acknowledged receiving the tenant's written forwarding address on February 29, 2012, and that she has not returned any portion of the tenant's security deposit or pet damage deposit.

When questioned, the landlord agreed that the carpet cleaning she had done was for the whole house, not just the upper suite.

In response, the tenant said that the carpet had stains on it at the move-in, as noted in the condition inspection report and that she had to have the carpet professionally cleaned herself at the start of the tenancy.

The tenant stated that the landlord's concern was for a large stain in the living area, which was present during the final inspection on March 3, but not on the day the tenant vacated on February 28, as noted in the tenant's extensive photographic evidence taken after two days of cleaning.

Despite having moved out on February 28, 2012, and several requests for an inspection on February 29, the landlord failed to arrange for the inspection until March 3, 2012.

The tenant also submitted that the landlord had several showings of the rental unit to prospective tenants after she vacated.

The tenant denied leaving a pet odour, as complained of by the landlord, as she had gerbils, confined in a cage, which are known for their lack of pet odours, as noted in her written submission.

The tenant submitted that she had the carpet professionally cleaned at the end of the tenancy, as shown by her evidence, and has not been returned any portion of her deposits.

The tenant's monetary claim is $1692.02, for a return of her security deposit, pet damage deposit, photocopy costs, registered mail costs, photo printing costs and childcare expenses.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

**Landlord's application-**

I find the landlord submitted insufficient evidence to support her claim for carpet cleaning. In reaching this conclusion, I relied on the move-in condition inspection report, which showed that the carpet was stained at the beginning of the tenancy. As to the large spot to which the landlord referred, I find that although the spot in the living area was shown at the final inspection, the spot was not present when the tenant vacated the rental unit, as clearly shown by the tenant's evidence. The tenant's evidence included clear photos of the exact spot with grids, both at the time of vacancy and the date of the final inspection. It was through no fault of the tenant that the final inspection did not take place until several days after the last day of the tenancy, when the landlord had regained possession of the rental unit.

I also find the landlord submitted insufficient evidence to prove the state of the carpet in the lower suite at the time the tenant took possession and that it required cleaning at the

end of the tenancy, due to the lack of a new condition inspection report for the lower suite.

Due to the above, I dismiss the landlord's claim for carpet cleaning, without leave to reapply.  I find the landlord's application lacked merit and I have therefore declined to award the landlord recovery of the filing fee.

**Tenant's application-**

When a landlord fails to properly complete a condition inspection report, the landlord's right to claim against the security deposit and pet damage deposit for damage to the property is extinguished. Because the landlord in this case did not carry out a move-in inspection for the lower suite during the tenancy when the tenant took over the lower suite, she lost her right to claim against the security deposit and pet damage deposit for damage to the property as in this case the landlord's claim was for damage to the entire home.  I was further persuaded to make this finding as the landlord expressed concern for the condition of the carpet in the lower suite, for which there had not been an inspection, not just the upper suite, as well as her confirmation that the carpet cleaning was performed on the entire house.

Because the landlord's right to claim against the security deposit and pet damage deposit for damage to the property was extinguished, and she failed to return the tenant's deposits within 15 days of having received the tenant's forwarding address, in this case, February 29, 2012, section 38 of the Act requires that the landlord pay the tenant double the amount of the deposits.

I therefore find that the tenant has established a monetary claim of $3000.00, comprised of her security deposit of $1200.00 and pet damage deposit of $300.00, doubled.

As to the tenant's claim for photo printing costs, I find the tenant was required to have her photographs developed due to having received the landlord's claim for costs to clean the carpet, as her (the tenant) photos showed a marked difference when the tenant ceased to occupy the rental unit, after cleaning, and four days later, at the final inspection when the landlord had control of the rental unit.

I therefore find the tenant has established a claim for damage or loss in the amount of $51.78.

As to the tenant's remaining claim, costs incurred that relate to processing a claim for damages are limited to the cost of the filing fee, which is specifically allowed under section 72 of the Act.  I therefore dismiss the tenant's claim to recover photocopy costs, registered mail costs and childcare expenses.

I find the tenant's application had merit and I grant her recovery of the filing fee.

I therefore find the tenant has proven a monetary claim in the amount of $3101.78, comprised of her security deposit of $1200.00, doubled, her pet damage deposit of $300.00, doubled, photo printing costs of $51.78 and recovery of the filing fee of $50.00.

Conclusion

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

The tenant is granted a monetary order in the amount of her monetary claim of $3101.78.

I am enclosing the monetary order for $3101.78 with the tenant's Decision.  This order is a legally binding, final order, and it may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement should the landlord fail to comply with this monetary order.

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 31, 2012.

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Residential Tenancy Branch