



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit, for authority to retain the tenant's security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and each party confirmed receipt of the other's evidence.

Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to retain the balance of the tenant's security deposit and to recover the filing fee?

Background and Evidence

The tenancy began at beginning of August 2007, ended on June 30, 2012, ending monthly rent was \$895.00 and the tenant paid a security deposit of \$435.00 on or about July 4, 2007.

The parties agreed that the landlord was provided the tenant's written forwarding address on June 30, 2012, on the condition inspection report.

The parties also agreed that the tenant consented to the landlord deducting the amount of the carpet cleaning from her security deposit, which was estimated at the end of the tenancy to be in the amount of \$130.00.

The landlord provided the following evidence-

The landlord said that following the move out inspection on June 30, 2012, an issue arose, where in some other tenants mentioned that extra furniture was left at the residential property's common area garbage site, requiring removal, and that the tenant's name was mentioned. The landlord acknowledged that they had no proof of the tenant leaving any personal property at the garbage site and that the final day was mass confusion around the residential property due to a changeover in the property manager on June 30 and July 1, 2012. The property manager said that the prior property manager failed to perform his job in completing the condition inspections with the departing tenants.

The landlord withheld the amount of \$140.00 for carpet cleaning, \$128.80 for garbage removal and the dispute resolution filing fee of \$50.00 from the tenant's security deposit and interest of \$444.77, and returned to the tenant the amount of \$125.97.

I note that a review of the condition inspection report, signed by the tenant, shows a handwritten notation of tenant charges of carpet cleaning of \$125.00 + HST and furniture removal of \$115.00 + HST.

Upon query, the landlord acknowledged that this notation was written on the condition inspection report after the tenant had signed the document as no mention was made on the day of the inspection about furniture or garbage removal.

The tenant provided the following evidence-

The tenant emphatically denied leaving any garbage or furniture at the garbage area and said that she signed the condition inspection report in good faith allowing a deduction for carpet cleaning. The tenant submitted that she knew nothing of a garbage removal until receiving a partial refund cheque.

The tenant explained that she thoroughly cleaned the rental unit as mentioned on the condition inspection report.

The tenant questioned the intent of the landlord to alter a document after her signature on that document.

The tenant's relevant evidence included a written summary of the events surrounding the date of the move out, explaining the confusion around the premises and denying

leaving any garbage and the statement from her witness who attended with the tenant on the date of the inspection. This statement confirmed the tenant's version of events.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the case before me as to the cost of furniture removal, I find the landlord submitted insufficient evidence that the tenant was responsible for the costs of furniture removal as there was a complete lack of proof that the furniture belonged to the tenant. Rather I accept the evidence before me that the furniture and garbage belonged to other tenants of the residential property. I therefore find the landlord has failed to meet the second step of their burden of proof and I dismiss their claim for \$128.80, without leave to reapply.

As to the landlord's claim for carpet cleaning, the tenant has previously authorized the deduction from her security deposit in this amount, and I therefore find the landlord is authorized to retain the amount of \$140.00.

As to the landlord request to retain \$50.00 for cost of the filing fee, as I find the landlord had authority to retain the carpet cleaning costs and failed to meet their burden of proof for furniture removal, I dismiss their request for recovery of the filing fee.

Conclusion

I find the landlord has established a monetary claim of \$140.00 for carpet cleaning. I dismiss the landlord's monetary claim for garbage removal of \$128.80 and the filing fee of \$50.00.

As the landlord has retained the total amount of \$318.80, I allow the landlord to keep \$140.00 and direct the landlord to return the balance of the tenant's security deposit and interest in the amount of \$178.80.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$178.80, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

The landlord should be made aware that altering documents, such as condition inspection reports, after the other party has signed that document calls into question the validity of that document.

If the landlord has any question as to the legality of altering documents after the other party has signed that document, the landlord is advised to seek the counsel of a lawyer.

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* and is being mailed to both the applicant and the respondent.

Dated: September 26, 2012.

Residential Tenancy Branch