



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for carpet cleaning costs. The landlord was seeking to retain the security deposit in partial compensation for the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Issue To Be Determined

Is the landlord is entitled to monetary compensation under the Act or tenancy agreement?

Background and Evidence

The landlord testified that the tenancy began on February 1, 2011. Rent was \$850.00. A security deposit of \$425.00 and pet damage deposit of \$425.00 were paid. After giving proper written notice, the tenant vacated the rental unit on October 31, 2012.

The tenant testified that the written forwarding address was provided to the landlord on September 30, 2012 when they gave their Notice to end tenancy.

The landlord testified that a move out condition inspection was scheduled to be held on October 31, 2012, and this was confirmed verbally with the tenant, but the tenant did not appear and the landlord could not reach the tenant by telephone. The landlord testified that the move out inspection was completed without the tenant on October 31, 2012. A copy of the move out condition inspection report was submitted into evidence. The report confirmed that the inspection took place on October 31, 2012 and that the unit was re-rented on November 15, 2012.

The landlord acknowledged that no written notification of the inspection, nor final opportunity to reschedule the inspection notice had been served on the tenant by the landlord.

The tenant disputed the landlord's allegation that the precise time for the move out condition inspection was confirmed with the tenant verbally or otherwise. The tenant testified that they tried repeatedly to confirm the time for the inspection. The tenant testified that no written notifications of the inspection date and time were ever received.

The landlord testified that the tenant had left the carpets filthy and the landlord had the carpets professionally cleaned at a cost of \$168.00. The landlord submitted an invoice dated December 31, 2012, confirming the cost. The landlord also submitted photos of the carpets.

The tenant disputed that the carpets were not left reasonably clean and pointed out that they used their own professional carpet-cleaning equipment to clean the carpets prior to vacating.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming payment bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual cost of the loss or damage.

With respect to the landlord's claim for carpet-cleaning, I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that, section 35 of the Act states that, in arranging the move-out inspection, the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. Section 36 (2) of the Act states that the right of the landlord to claim against a security deposit, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) *[2 opportunities for inspection]*,

In this instance, I find that the landlord was not able to sufficiently establish that the Act and Regulation had been followed with respect to the move out condition inspection report. I also find that the landlord's invoice for the carpet cleaning was dated two months after the end of the tenancy.

On a balance of probabilities, I accept the tenant's testimony that they cleaned the carpets and left the rental unit in a reasonably clean state as required by section 37 of the Act..

Accordingly, I find that the landlord's monetary claim was not sufficiently proven and must be dismissed.

Given the above, I find that the landlord is not entitled to retain the tenant's security deposit or pet damage deposit. In regard to refunding the deposits, I find that the Act states that the landlord can only retain a deposit if the tenant agrees to this in writing. If the permission is not in written form and signed by the tenant, then the landlord has no right to keep the deposit, without first obtaining an order to do so.

The Act requires that, within 15 days after the tenancy had ended and the written forwarding address has been given, the landlord must either make an application or refund the security deposit and pet damage deposit.

Section 38(6) provides that, if a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit and pet damage deposit.

In the case before me, I find that the tenant provided a written forwarding address to the landlord on September 30, 2012 and the landlord made this application for dispute resolution to keep the security deposit on November 13, 2012, more than 15 days later.

Given the above, I find that the landlord must pay the tenant an amount that is double the \$425.00 security deposit and double the \$425.00 pet damage deposit. In doubling

the \$850.00 being held, I find that the tenant is entitled to total compensation from the landlord in the amount of \$1,700.00.

Based on the testimony and evidence, I hereby dismiss the landlord's claim in its entirety without leave to reapply and grant a monetary order in favour of the tenant for \$1,700.00.

This order must be served on the landlord and is final and binding. If necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is not successful in the application and the monetary claim is dismissed without leave. The tenant is granted a monetary order for a refund equivalent to double the security deposit and pet damage deposit.

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: February 19, 2013

Residential Tenancy Branch

