



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

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

The tenant present at the hearing confirmed that the co-tenant respondent was served with the hearing documents; he did not attend.

Issue(s) to be Decided

Is the landlord entitled to compensation for damage to the rental unit?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy commenced in 2006. The landlord is holding a security deposit in the sum of \$475.00. A move-in condition inspection report was completed and a copy supplied as evidence. The tenants had lived in the unit for approximately 1.5 years before the landlord purchased the home and assumed the tenancy. When the tenants originally moved into the unit it had just been newly constructed.

The tenancy ended effective April 30, 2016 with notice given by the tenants. The landlord received the tenants' written forwarding address on April 30, 2016. The landlord said that an application claiming against the deposit was "registered" electronically on May 14, 2016. The landlord believed they then had three days to pay

the filing fee, but that the application was considered to have been made on May 14, 2016. The filing fee was paid on April 19, 2016 and the notices of hearing were issued on that date.

The landlord has claimed \$413.28 to replace a glass shower door; \$10.48 for a blind and \$200.00 for labour costs.

The landlord submitted a copy of an email sent by the tenants on March 29, 2016. The tenants wrote that the movers would be at the home on April 15 at 9:30 a.m. for a move by 1 p.m. The landlord accepted this email as agreement to complete an inspection. The tenant stated that an inspection was not arranged by the landlord. The landlord attended at the rental unit on April 15, 2016 at 1 p.m. but the tenants had vacated.

The male tenant had emailed the landlord on April 28, 2016; asking for a phone number as the tenant wished to speak to the landlord. The landlord submitted an April 30, 2016 email sent to the male tenant at his place of employment; to the same address used by the tenant on April; 28, 2016. The landlord offered what was referred to as a second opportunity to complete an inspection report. The landlord asked if the tenant could attend on April 30, 2016 after he completed work. The male tenant did not respond and did not attend at the rental unit.

There was no dispute that in June 2013 when the tenant was cleaning the glass shower door it broke. The tenant was shocked as she was just cleaning the door. The tenant said that the landlord took her to the hospital and then to a store to purchase a shower curtain. The tenant said the landlord never suggested they should replace the glass door.

The landlord has claimed the cost of the shower door, but it has not been replaced as the rental unit has been sold. The landlord said that the purchase price of the home was reduced to reflect this loss. The landlord was asked if there was a record of this price reduction supplied as evidence; there was not.

The landlord confirmed that labour costs were not incurred.

The tenant agreed to the cost of the blind, as claimed.

Analysis

Residential Tenancy Branch (RTB) policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred.

I have determined that the landlord has not proven any loss in relation to the shower door. The landlord has sold the home; had not replaced the door and provided no evidence of any loss in value related to the door.

Therefore, I find that the claim for the shower door is dismissed.

The landlord confirmed that labour costs were not and would not be incurred. Therefore, I find that the claim for labour is dismissed.

The tenant has agreed to pay the cost of the blind, in the sum claimed; \$10.48.

In relation to the security deposit I find that the landlord did not schedule a move-out condition inspection as required by section 35 of the Act. I find that the email sent by the tenant on March 29, 2016 did not form notice of an inspection given by the landlord. The tenant was notifying the landlord of the time they expected to vacate on April 15, 2016.

On April 30, 2016 the landlord emailed the male tenant with what I find was the first attempt to schedule an inspection; asking they meet on that date after work hours. The landlord was at the rental unit and the tenant did not attend; however I am not confident the male tenant received the April 30, 2016 email. The landlord did not proceed with any offer of another opportunity for an inspection, as required by section 35 of the Act.

Therefore, I find pursuant to section 36 of the Act that the landlord extinguished the right to claim against the security deposit as there is no evidence the landlord offered the tenants at least opportunities to complete an inspection.

As the landlord extinguished the right to claim against the deposit I find that within 15 days of April 30, 2016, the date the forwarding address was received, the landlord was required to return the deposit, pursuant to section 38(1) of the Act.

When the landlord failed to return the deposit within fifteen days of April 30, 2016 section 38(6) of the Act determines that the landlord is holding a security deposit in the sum of \$950.00, plus \$15.82 interest. Therefore, I find that the landlord is holding a security deposit in the sum of \$950.00.

An application is filed when the filing fee has been paid. As the landlord paid the fee on April 19, 2016; the application was made more than 15 days after receipt of the written forwarding address.

RTB policy suggests that when a landlord applies claiming against a deposit any balance should be ordered returned to the tenant. I find this takes a reasonable stance.

Based on these determinations I grant the tenant a monetary order in the sum of \$939.52 (\$475.00 X 2 + \$15.82 interest - \$10.48.) In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

I decline filing fee costs to the landlord.

Conclusion

The application is dismissed.

The tenant is entitled to return of double the security deposit, interest; less the amount agreed owed to the landlord for a blind.

Filing fee are declined.

This decision is final and binding and 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: November 15, 2016

Residential Tenancy Branch