

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damages, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started April 15, 2008 with rent of \$1850.00, the tenant paid a security deposit of \$925.00.

The tenant testified that neither the move-in or move-out inspections were completed and signed off with both the landlord and tenant present and that the move-out inspection report is a new document created by the landlord. The tenant stated that during her tenancy she had made a number of requests for a copy of the move-in inspection report. The tenant stated that she received a copy of the move-in inspection report in October 2010 as part of the landlord's evidence package.

The landlord testified that he did not recall when he gave the tenant a copy of the move-in condition inspection report but remembered putting a copy of the report in the mail box at the residence, the landlord did not recall the tenant asking for a copy of the report.

The landlord stated that the tenant over-held the property by 2 days and did not vacate the rental unit until October 2, 2010. The landlord stated that on October 1st and 2nd he attended the rental unit and attempted to complete the move-out inspection but that the tenant was never ready to join him in completion of the inspection. The landlord then completed the move-out inspection and left a copy with the tenant.

The landlord stated that the tenant did not clean the carpets, blinds, drapes or fridge and that the tenant took the landlord's aluminum ladder.

Law

Residential Tenancy Act **Section 23 Condition inspection: start of tenancy**

- (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
 - (a) *the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) *a previous inspection was not completed under subsection (1).*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*
- (4) *The landlord must complete a condition inspection report in accordance with the regulations.*
- (5) *Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.*
- (6) *The landlord must make the inspection and complete and sign the report without the tenant if*
 - (a) *the landlord has complied with subsection (3), and*
 - (b) *the tenant does not participate on either occasion.*

Residential Tenancy Act **Section 24 Consequences for tenant and landlord if report requirements not met**

- (1) *The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*
 - (a) *the landlord has complied with section 23 (3) [2 opportunities for inspection], and*
 - (b) *the tenant has not participated on either occasion.*
- (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
 - (a) *does not comply with section 23 (3) [2 opportunities for inspection],*
 - (b) *having complied with section 23 (3), does not participate on either occasion,*
 - (c) *does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.*

Residential Tenancy Regulation **Section 14 Rental unit to be empty**

The landlord and tenant must complete a condition inspection described in section 23 or 35 of the Act [condition inspections] when the rental unit is empty of the tenant's possessions, unless the parties agree on a different time.

Residential Tenancy Regulation **Section 16 Scheduling of the inspection**

- (1) *The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.*
- (2) *A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.*

Residential Tenancy Regulation **Section 18 Condition Inspection report**

- (1) *The landlord must give the tenant a copy of the signed condition inspection report*
 (a) *of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and*
 (b) *of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of*
 (i) *the date the condition inspection is completed, and*
 (ii) *the date the landlord receives the tenant's forwarding address in writing.*
- (2) *The landlord must use a service method described in section 88 of the Act [service of documents].*

Analysis

Based on the documentary evidence and testimony I find that the tenant was not provided a copy of the move-in inspection report per the Act therefore the landlord has extinguished his right to claim against the security deposit or to claim for damages to the residential property.

I hereby dismiss the landlord's monetary claim for damages, compensation for damages or to keep all or part of the security deposit without leave to reapply.

The landlord is entitled to a monetary claim for the 2 days that the tenant over-held the rental unit.

I find that the landlord has established a claim for \$123.32 for the tenant over-holding.

As the landlord has had some success in this application the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's monetary claim for damages, compensation for damages or to keep all or part of the security deposit is dismissed without leave to reapply.

I find that the landlord has established a monetary claim for \$123.32 for the tenant over-holding. The landlord is also entitled to recovery of the \$50.00 filing fee.

A monetary order in the amount of **\$173.32** has been issued to the landlord and a copy of it must be served on the tenant. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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 24, 2011

Residential Tenancy Branch