



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

Landlord: MNSD, FF
Tenant: MNSD, FF, O

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for an order permitting the landlord to retain all or a portion of the security deposit or pet damage deposit, and to recover the filing fee from the tenant for the cost of this application. The tenant applies for double return of the security deposit or pet damage deposit, and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the hearing, and the tenant called a witness, her daughter to testify. The parties and the witness each gave affirmed testimony, and the parties were permitted to cross examine each other and the witness on their testimony. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit or pet damage deposit?
Is the tenant entitled to recovery or double recovery of the security deposit or pet damage deposit?

Background and Evidence

At the outset of the hearing, it was determined that a hearing proceeded by way of conference call on November 18, 2010 before a Dispute Resolution Officer who ordered that the landlord pay to the tenant double the amount of the security deposit. The landlord did not attend that hearing, and 5 days after receiving that Decision the landlord filed an application for a Review Hearing, which was granted. The Review Hearing was convened on February 1, 2011 and the tenant's application was then dismissed with leave to reapply. This hearing is a cross application of the tenant's new

application filed on February 9, 2011 along with the landlord's application which was filed on February 8, 2011.

The parties agree that this tenancy was to begin on August 1, 2010, although the tenant never moved in. A Tenancy Agreement was signed by the parties on July 13, 2010. A copy of the agreement was provided in advance of the hearing, and it states that rent in the amount of \$1,600.00 per month was payable, however it does not indicate when rent was payable. The parties also agree that on July 12, 2010 the landlord collected a security deposit from the tenant in the amount of \$800.00. No pet damage deposit was collected.

The landlord testified that on July 11, 2010 the tenant and her daughters looked at the house and agreed to rent both the upstairs and the downstairs units of the house. They wanted to show the tenant's son-in-law, and the following day the tenant looked at the house again and paid the security deposit, but the son-in-law was not available at that time to view the suite. On July 27 or 28, 2010 the tenant, her daughter and son-in-law again looked at the suite and wanted to change the carpet in the living room. The parties discussed the carpet and paint, and the parties agreed to each pay for half of the carpet. The tenant also wanted to paint, so the landlord gave them the key for the lower unit because that's where the paint was.

The landlord also testified that there were tenants in the upper unit who were moving out on July 31, 2010.

On July 29, 2010 the tenant called the landlord to say that she would not be taking the house because of an infestation of rats. The landlord stated that she was in and out of the unit for 2 weeks in the lower level and saw no rats.

The landlord provided evidence of advertising the house for rent again after receiving the tenant's call; the advertisements commence on August 4, 2010, although the landlord provided evidence of advertisements prior to the signing of the tenancy agreement as well. The landlord stated that the unit was re-rented on October 1, 2010, although she provided a letter from the new tenant which states she's been in the unit since September. The landlord also stated that she is not claiming 2 month's rent, but only to keep the security deposit for the tenant's failure to carry out the terms of the tenancy agreement.

The tenant's witness testified that she did most of the talking with the landlord. She stated that the house was still occupied when they viewed it so they could not see all of it due to belongings still in the upper unit of the house. She stated that her mother paid the security deposit to the landlord so that the landlord would hold it until the tenant's

son-in-law could be available to see the house. When the son-in-law, the witness's husband was available, he attended the unit with the tenant and her daughter, but they weren't able to go inside the upstairs unit, and the landlord didn't have a key to the downstairs unit. A new date was arranged of July 28, 2010 but again they were only able to see the downstairs unit. She stated that that was when the parties discussed painting.

The witness also testified that when her husband attended on July 29, 2010 2 rats ran out of the house when he opened the door. He then looked around and noticed mould in the unit. The upstairs tenants were moving at the time, and he spoke to them and they advised they were moving out because of rats. They invited him in and showed him holes in the walls. They stated that the previous tenants in the downstairs unit moved without taking all of their furniture, and the holes were put in the walls because they could hear the rats in the walls. The witness also testified that when she viewed the downstairs unit, beds, a car bed, a wardrobe in the living room and one in the master suite were left in there from the previous tenants. She was also expecting a baby at the time, and did not want to be exposed to rats or rat feces.

The witness also testified that she assisted her mother, whose English is improving, and that the tenant provided her forwarding address in writing to the landlord by sending it via UPS. She also stated that the UPS record shows the landlord received it on December 13, 2010.

The tenant testified that on July 29, 2010 she called the landlord to explain that she could not take the house due to rats. The next day she visited the tenants upstairs who confirmed rats. They let her in and she took pictures. She also saw feces in the downstairs unit. She stated that she sent copies of the photographs to the landlord, but the landlord didn't pick up the mail and it was returned to the tenant. The tenant testified that she re-sent the photographs with her forwarding address on December 10, 2010. She stated that she had to ask her previous landlord if she could stay for another month, and he agreed, but her phone was already transferred to the new unit, and she consequently lived without a phone for a month.

The tenant also testified that she spoke to the landlord who verbally agreed to return the security deposit, but hasn't returned any portion of it.

Analysis

Whether or not the landlord ever saw a rat is really not the issue before me. The tenant's concern about rats should have been enough to cause the landlord to investigate, and I've heard no evidence of that. The landlord argues that there were no rats, but did not provide any evidence of how she knew that other than she didn't see any when she spent 2 weeks going in and out of the lower unit.

The evidence of the tenant's witness is that they were not able to see all of the unit prior to the signing of the tenancy agreement and paying the security deposit. There were tenants living in the upstairs unit, and when the son-in-law arrived, he was not able to see the unit until another trip on July 29, 2010. The security deposit was paid on July 12, 2010 to hold the unit until he could see it, and the tenancy agreement was signed on July 13, 2010.

The *Residential Tenancy Act* places the onus on the landlord to provide and maintain a residential unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and make it suitable for occupation by a tenant. In this case, I have no evidence that the landlord took any reasonable steps to ensure that there were no rats once told of that by the tenant on July 29, 2010. Therefore, I find that the tenant was justified in breaking the agreement.

With respect to the tenant's application for double recovery of the security deposit, the *Act* states that the landlord must return the tenant's security deposit within 15 days from the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, or must pay the tenant double. I find that the landlord received the tenant's forwarding address in writing on December 13, 2010. On December 17, 2010 the landlord filed for a Review of the Decision rendered November 18, 2010 and in a Decision dated January 5, 2011 a new hearing was ordered. A new hearing was conducted on February 1, 2011, which dismissed the tenant's application with leave to reapply, and the landlord applied for dispute resolution on February 8, 2011. In this case, the landlord made an application to review the Decision on December 17, 2010, and I find that that qualifies as making an application for dispute resolution. Therefore I find that the tenant is entitled to recovery of the security deposit but not double the amount of the security deposit. The tenant is entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant in the amount of \$850.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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

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: March 07, 2011.

Residential Tenancy Branch