



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of that deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of her security deposit and if so, how much?

Background and Evidence

This tenancy started on May 4, 2010. Rent was \$750.00 per month. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Tenant claimed that at the beginning of the tenancy, an agent for the Landlord (F.K.) gave her an already completed move in condition inspection report to sign but did not ask her to participate in an inspection of the rental unit. The Tenant also claimed that at the end of the tenancy she tried a number of times to contact the Landlord's agent (without success) in order to set up a move out inspection. The Tenant said she finally went to the Landlord's agent's office on September 24, 2010 and the Landlord's agent told her that she did not have time to do a move out inspection. The Tenant said the Landlord's agent gave her a blank move out condition inspection form and blank security deposit deduction form and asked her to sign them. The Tenant said she was reluctant to do so but was reassured by the Landlord's agent who said that she did not anticipate any problems and would call her if there were any. Consequently, the Tenant said she signed the forms and put a slash mark through the line(s) on the security deposit deduction form where any deductions were to be listed. The Tenant said she did this to indicate that she was not authorizing any deductions from the security deposit.

The Tenant said she also gave the Landlord her forwarding address in writing on the move out condition inspection report on September 24, 2010. The Tenant said approximately 3 weeks later she received a cheque in the amount of \$75.50 from the Landlord together with a copy of the move out condition inspection report and security deposit deduction report that had both been filled out by F.K. after she had signed them.

The Tenant said the Landlord's agent (F.K.) inserted amounts for cleaning in the amount of \$297.50. The Tenant said she did not authorize these deductions and denied that any cleaning was necessary. In any event, the Tenant argued that the Landlord agreed she would advise her of any deficiencies prior to the end of September 2010 so she could return to the rental unit to deal with them (because she had paid rent to the end of that month).

The Landlord's agent (F.K.) admitted that she knew the Tenant would be moving out at the end of September 2010 but claimed that she did not realize the Tenant had moved out until September 22, 2010 when she showed the suite to a prospective tenant. The Landlord's agent said she did not have any way to contact the Tenant so she completed the move out condition inspection form that day. Consequently, the Landlord's agent said, when the Tenant arrived at her office of September 24, 2010 and signed the move out condition inspection report it was not blank but had information already on it. The Landlord's agent admitted that she did not insert any information about deductions on the Security Deposit deduction form until after the Tenant signed it because she did not know at that time what expenses the Tenant would be responsible for.

The Landlord's agent, E.P., argued that the Tenant agreed on the last page of the Condition Inspection Report that the report fairly represented the condition of the rental unit. However, that section of the report is dated May 4, 2010 and the Landlord's agent, F.K. agreed that this section referred to the *move in* condition inspection report only. The Landlord's agent, E.P., also argued that the Tenant agreed in the same section of the Condition Inspection Report that the Landlord could deduct all or part of the security deposit. The Tenant claimed that this section of the condition inspection report was also completed at the beginning of the tenancy and she understood it to simply be a statement of the amount of the security deposit she had paid.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he or she receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

I find that the tenancy ended on September 24, 2010 when the Tenant moved out and returned her keys to the Landlord's agent. The Parties agree that the Tenant gave the Landlord's agent her forwarding address in writing on September 24, 2010, that the Tenant paid a security deposit of \$375.00 at the beginning of the tenancy and that \$77.50 of that deposit was returned to the Tenant after the tenancy ended. The Parties

disagree as to whether the Tenant gave the Landlords written authorization to keep \$297.50 from her security deposit.

The Parties agree that the Landlord's agent (F.K.) added information to a Security Deposit Deduction form after the Tenant signed it on September 24, 2010 and that she did not authorize the deductions that were added to *that* form. The Landlord's agent, E.P., argued however, that the Tenant gave her written authorization to make deductions from the security deposit on the last page of the condition inspection report which states as follows:

"I agree to the following deductions from my security deposit: \$375.00
Dated: May 4, 2010"

I find however, that the move out condition inspection report is invalid for a number of reasons. Firstly, it was not completed with the Tenant as required by s. 35 of the Act. Although the Landlord's agent argued that she did not know how to contact the Tenant prior to September 24, 2010, she did have an opportunity to arrange a move out inspection with the Tenant on September 24, 2010 but failed to do so.

Further, although the Landlord's agent argued that all of the information was on the move out condition inspection report on September 24, 2010 when the Tenant signed it, I find on a balance of probabilities that that was likely not the case. In particular, I found the evidence of F.K. to be unreliable in the following respects:

- F.K. claimed that she completed the information on the move out condition inspection report on September 22, 2010 however the report states that it was completed on September 24, 2010;
- The Security Deposit Deduction form is dated September 22, 2010, however the Landlord's agent admitted that she did not add any information to that form on that date even though she had done an inspection that day. F.K. admitted that she had the Tenant sign it on September 24, 2010 and added the information about deductions after September 24, 2010; and
- The Landlord's agent (F.K.) admitted in her oral evidence that she was unaware of the requirement under s. 35 of the Act and s. 17 of the Regulations to offer tenants 2 opportunities to participate in a condition inspection and was also unaware that she could not add information to forms after a tenant had signed them.

I find this evidence more consistent with the Tenant's argument that a move out inspection had not been done as of September 24, 2010. I am also persuaded by the Tenant's evidence that given that the move out condition inspection report was not completed on September 24, 2010 she asked the Landlord's agent to contact her if the Landlord's agent found any deficiencies *once she did inspect the rental unit* because

she wanted an opportunity to address them before the end of the month. For all of these reasons, I find on a balance of probabilities the move out condition inspection report **was not** completed when the Tenant signed it on September 24, 2010.

Notwithstanding the invalidity of the move out condition inspection report as a whole, I find that the provision of the move out condition inspection report relied on the Landlord's agent, E.P., (that authorized the Landlord at the beginning of the tenancy to keep all or part of the Tenant's security deposit at the end of the tenancy) contravenes s. 20(e) of the Act and is therefore of no force and effect. Section 20(e) of the Act says that "*a Landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of a tenancy.*" Consequently, I find that the Landlord did not have the written authorization of the Tenant to keep all or part of her security deposit.

Furthermore, s. 24 and s. 36 of the Act state that if a Landlord does not give a tenant 2 opportunities to participate in a move in and a move out condition inspection, the Landlord may not keep the security deposit to pay for damages to the rental unit but must return the deposit. Consequently, I find that the Landlord did not have the Tenant's written authorization to keep the security deposit, did not make an application for dispute resolution to make a claim against the deposit and it did not have a right to retain the deposit in any event because the Landlord's agent did not complete a move out condition inspection report in accordance with the Regulations to the Act.

As a result, I find that pursuant to s. 38(6) of the Act, that the Tenant is entitled to compensation equal to the amount of her security deposit (\$375.00) as well as to the return of the balance of the security deposit that the Landlord did not return (\$297.50). As the Tenant has been successful in this matter, I also find pursuant to s. 72 of the Act that she is entitled to recover from the Landlord the \$50.00 filing fee for this proceeding.

Conclusion

A Monetary Order in the amount of **\$722.50** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, 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: April 07, 2011.

Residential Tenancy Branch