



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and the female landlord attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other. The landlord also indicated that her sir-name differs from her husband's, and the application was amended to correct the spelling of her name. Also, the landlord provided evidence in advance of the hearing, which was not received by the Residential Tenancy Branch within the time required under the *Residential Tenancy Act* and the Rules of Procedure, and the evidence was not provided to the tenant. As a result, the evidence provided by the landlord is not considered in this Decision. All testimony provided is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on January 1, 2009 and ended on June 30, 2010. Rent in the amount of \$800.00 per month was payable in advance on the 1st day of each month, and there are no rental arrears. On or about January 1, 2009 the landlords collected a security deposit from the tenant in the amount of \$400.00. No written tenancy agreement was prepared and no move-in or move-out condition inspection reports were completed.

The tenant testified that once her belongings were removed from the rental unit, she and the landlords conducted a visual walk-through of the rental unit and the landlord asked the tenant for her forwarding address in writing. The tenant provided it on June

30, 2010 along with the keys for the rental unit. About a month later the tenant contacted the landlords requesting the security deposit back. They told her they would send it but they were busy. About another month later the tenant texted the landlords again requesting the security deposit and the landlords responded that there was water damage to the rental unit and they would not be returning the security deposit.

The tenant further testified that she did not receive any portion of the security deposit back from the landlords and she did not authorize that the landlords keep any portion of it. She further testified that she has not been served with a Landlord's Application for Dispute Resolution.

The landlord testified that during the tenancy, smoking was prohibited, but many times the landlords had to tell the tenant that smoke was coming from the rental unit. Further, there were damages to a door and water damage to the unit. The landlords also had to repaint the entire unit due to smoking.

The landlord further testified that she is familiar with the *Residential Tenancy Act*, and felt they were entitled to retain the security deposit due to damages.

Analysis

The *Residential Tenancy Act* states that the landlord must return all of the security deposit, with interest calculated from the date that it was paid, within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing, or apply for dispute resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must pay the tenant double the amount of the security deposit and interest on the base amount.

The *Act* further states that if a landlord fails to complete a move-in condition inspection report and a move-out condition inspection report with the tenant and provide the tenant with a copy of those reports, the landlord's right to claim against the security deposit for damages is extinguished.

In this case, I find that the tenancy ended on June 30, 2010 and the tenant provided a forwarding address in writing on that date. The landlord did not apply for dispute resolution claiming against the security deposit and did not return any portion of it to the tenant within the 15 days required under the *Act*.

I further find that the landlord's right to claim against the security deposit for damages is extinguished because the landlords failed to complete any condition inspection reports or to give a copy to the tenant.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

I further find that no interest is payable for the years 2009 or 2010 or 2011.

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.

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: May 27, 2011.

Residential Tenancy Branch