



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for return of all or part of the pet damage deposit or security deposit, for which the tenant claims double; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord attended the conference call hearing. The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence, and each party provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. After the hearing concluded, the landlord provided additional evidence. Because the evidence was not provided within the times provided by the *Residential Tenancy Act* or the Rules of Procedure, none of that evidence is considered in this Decision. All other evidence and the testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to monetary order for return of the pet damage deposit or security deposit, or double the amount of the security deposit or pet damage deposit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agree that this month-to-month tenancy began on August 1, 2010 and ended on January 29, 2011. Rent in the amount of \$750.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On June 30, 2010 the landlord collected a security deposit from the tenant in the amount of \$375.00 and no pet damage deposit was collected.

The tenant testified that the original tenancy agreement stated that 40% utilities is included in the rent, and she has paid the utilities that were presented to her by the landlord. A copy of the tenancy agreement was provided in advance of the hearing by both the landlord and by the tenant, however they are not identical. The one provided by the tenant states what is included in the rent, and under that section is hand writing that says, "40% utilities." The one provided by the landlord states what is included in the rent, and under that section is handwriting that says, "40% utilities not included." The tenant testified that the one provided by the tenant is a true copy of the one provided to her by the landlord at the commencement of the tenancy.

The tenant further testified that she called the landlord on December 27, 2010 and advised that she would be moving at the end of January. The landlord went to the rental unit on January 3, 2011 to collect the rent and the tenant confirmed that she would be moving by handing the landlord her written notice.

The tenant further testified that on January 29, 2011 the landlord and his daughter (the agent for the landlord at this hearing) completed a walk-through of the rental unit at which time the tenant handed the agent a note containing her forwarding address as well as a toll-free phone number and her new phone number. No move-in condition inspection report was completed at the outset of the tenancy, and no move-out condition inspection report was completed at the end of the tenancy.

Prior to completing the walk-through at the end of the tenancy, the tenant asked the landlord's agent about return of the security deposit, and the landlord's agent wanted the tenant to give back an estimated amount of the utilities of approximately \$250.00. The tenant stated that she responded that she would pay the utilities, but wanted to see a bill first. The tenant asked again the day she moved out about the return of her security deposit, and no utility bill had yet been received, and the tenant was asked to leave the rental unit by the landlord and the landlord's agent. The tenant then waited outside for her father to pick her up. When her father arrived, he attempted to speak to the landlord about the security deposit, but the landlord and the landlord's agent refused to let him in and refused to speak to him. She further testified that she did not have a printer, so a copy of the note containing her forwarding address and her phone numbers was not kept.

The tenant claims double the amount of the security deposit as well as recovery of the utilities paid in the amount of \$343.76 and recovery of the filing fee for the cost of this application. No part of the security deposit has been returned to the tenant and the tenant did not authorize the landlord to retain any portion of it.

The landlord's agent testified that the tenant knew that she was responsible for, and paid the utilities from the commencement of the tenancy.

The landlord's agent also testified that the tenancy agreement was not changed by the landlord, and that the copy received from the tenant is the one that has been altered by removing the words, "not included."

The landlord's agent further testified that when the tenant called her before moving out she told the tenant that there were outstanding utilities, to which the tenant replied that she would not be paying the utilities.

The landlord's agent also testified that when the parties conducted the walk-through at the end of the tenancy, the landlord had the security deposit money with her, but upon asking for money for an estimate of the outstanding utilities, the tenant stated that she wouldn't pay it, so the landlord did not offer the security deposit back to the tenant. When questioned about the amount of the outstanding utilities for the rental unit, the landlord's agent was unable to provide that information.

She further stated that the tenant did not provide her with a forwarding address in writing or a phone number. She stated that the tenant had provided her with a cell phone number previously, but when the landlord's agent attempted to call the tenant, the phone number was no longer in service. She further stated that the landlord had intended to apply for dispute resolution to keep the security deposit but was unable to because she had no address for the tenant.

Analysis

Firstly, with respect to the discrepancy on the tenancy agreement, I accept the evidence of the tenant that she did not alter the agreement, and I find that the copy provided by the tenant is the true copy that was completed by the parties at the commencement of the tenancy. If the tenant had altered it, the tenant would have had to use some sort of liquid paper, and the lines on the pre-printed form would be obliterated, which they are not.

With respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, the tenant explained that her position is that utilities were included in the rent, and she paid utilities that she was not required to pay according to the tenancy agreement. However, I find that the intention of the parties at the outset and throughout the tenancy is that the tenant was responsible for the payment of 40% of the utilities, and therefore the tenant's application for recovery of those payments cannot succeed.

With respect to the security deposit, the *Residential Tenancy Act* requires the landlord to provide the tenant with at least 2 opportunities to conduct a move-out condition inspection report, and if the landlord fails to do so, the landlord's right to claim against the security deposit for damages is extinguished. In this case, I find that the landlord has failed to complete either condition inspection, and therefore, the landlord's right to claim against the security deposit for damages is extinguished.

The landlord has not made an application for dispute resolution claiming against the security deposit, and I find that the tenant is entitled to recovery of same. The *Act* also states that the landlord must return the security deposit to the tenant in full within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. The onus is on the tenant to prove that the landlord was provided with a forwarding address and the date it was provided. The tenant testified that the forwarding address was given to the landlord and the landlord's agent on January 29, 2011 which is disputed by the landlord's agent. The tenant testified that she did not keep a copy of the note. Therefore, I cannot be satisfied that the 15 day period should begin on January 29, 2011. I find that the tenant is entitled to recovery of the base amount of \$375.00. The tenant is also 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 \$425.00. 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: June 24, 2011.

Residential Tenancy Branch