



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 a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application. The tenant claims double the amount of the security deposit.

The tenant and the landlord both attended the conference call hearing, provided evidence in advance of the hearing, gave affirmed testimony, and were given the opportunity to cross examine each other. All evidence and testimony provided has been reviewed and 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, or double the amount of the security deposit?

Background and Evidence

The parties agree that this fixed term tenancy began on July 15, 2009 and expired on June 30, 2010 and then reverted to a month-to-month tenancy. The tenant moved from the rental unit on January 31, 2011. Rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On July 6, 2009 the landlord collected a security deposit from the tenant in the amount of \$600.00 and the landlord still holds that amount in trust. No pet damage deposit was collected by the landlord.

The landlord testified that on December 18, 2010 the tenant sent the landlord a note that she would be moving. The landlord responded that the property manager would do a walk-through of the rental unit and would be showing it. Emails were also sent to the tenant about the tenant smoking in the rental unit.

On February 5, 2011 the tenant sent the landlord an email which contained the tenant's forwarding address.

On or about February 7, 2011 the property manager did a walk-through of the rental unit, however no move-in condition inspection report had been completed at the outset of the tenancy, and no move-out condition inspection report was completed at the end of the tenancy.

On February 16, 2011 the tenant sent the landlord another email requesting the security deposit, and the landlord responded that he was out of town and thought the other owner had taken care of it, but he would confirm that.

On February 22, 2011 the tenant sent the landlord another email requesting the security deposit and the return of post-dated cheques that the tenant had provided for rent. The landlord stated that the address given by the tenant was incorrect. The landlord had sent a cheque to the tenant for return of the security deposit and the post-dated cheques, but the tenant had not cashed the cheque by March 3, 2011 so the landlord put a stop-payment on the cheque, although the mail was not returned to the landlord. When asked why a stop-payment was placed on the cheque, the landlord responded that he didn't feel comfortable with a cheque "floating around" without being received or cashed by the tenant. The landlord also stated that the tenant did not give the landlord an opportunity to correct the situation.

The tenant testified that on January 7, 2011 she had sent her forwarding address to the landlord by email.

On January 31, 2011 a walk-through of the unit was conducted by the tenant and a property manager, and everything looked great. The tenant emailed the landlord who responded that he would send the security deposit.

On February 23, 2011 the tenant again emailed the landlord who responded that the security deposit had been sent to the tenant the day before. The tenant did not receive it by February 28, 2011 and applied for dispute resolution.

The tenant further testified that on March 2, 2011 she received the cheque for the security deposit as well as the post-dated cheques. The tenant deposited the cheque in the bank on March 3, 2011 and was advised by the landlord by email on March 7, 2011 that the landlord had received the Tenant's Application for Dispute Resolution. The email also stated that if the tenant had told the landlord that the cheque hadn't been received, he would have dealt with it. On March 8, 2011 the tenant again emailed the landlord stating that the cheque had been received, but on March 10, 2011 the landlord put a stop payment on the cheque.

Analysis

The *Residential Tenancy Act* states that the onus is on the landlord to ensure that move-in and move-out condition inspection reports are completed in accordance with the regulations. If the landlord fails to complete those written reports the landlord's right to claim against the security deposit or pet damage deposit for damages is extinguished.

The *Act* also states that the landlord must return the security deposit in full or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. If the landlord fails to do either, the tenant is entitled to double recovery of the security deposit, or pet damage deposit, as applicable.

In this case, I find that the tenancy ended on January 31, 2011, and the landlord testified that the tenant provided a forwarding address in writing on February 5, 2011. The landlord did not return the security deposit until February 22, 2011, which is beyond the 15 days required under the *Act*. Therefore, I find that the tenant has established a claim for double the amount of the security deposit. I also find that the landlord's right to claim against the security deposit for damages is extinguished.

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 pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00. 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 30, 2011.

Residential Tenancy Branch