



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and for a monetary order for return of the pet damage deposit or security deposit.

The tenant attended the conference call with an advocate. An agent for the landlord company also attended, provided evidence in advance of the hearing and called a witness to testify.

Issue(s) to be Decided

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

Is the tenant entitled to return of all or part of the pet damage deposit or security deposit, or double the amount of the pet damage deposit or security deposit?

Background and Evidence

This month-to-month tenancy began on December 1, 2007 and ended on October 31, 2009. Rent in the amount of \$458.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. The landlord collected a security deposit in the amount of \$450.00 which was paid by the tenant in sporadic payments during the tenancy. No move-in or move-out condition inspection reports were completed.

The tenant testified that the landlord was provided with a forwarding address in writing on November 3, 2009. The landlord returned a total of \$20.12 with a letter addressed to the tenant explaining that that was the “unused portion” after fixing and cleaning the rental unit. The tenant also testified that the landlord did not serve the tenant with a Landlord’s Application for Dispute Resolution, and the tenant did not authorize the landlord to keep any portion of the security deposit.

The landlord's agent testified that there was no move-in condition inspection report because the tenant refused to sign it. The tenant wanted the unit painted and new carpets, which the landlord could not provide. The rental unit is in a non-profit housing complex. The move-out condition inspection report was not completed because the tenant was not cooperative. The tenant was supposed to be moved out and have the unit clean by 3:00 on the last day of the tenancy and did not comply with that arrangement and a new tenant showed at 3:00 ready to move in.

The landlord's agent also testified that the tenant left the rental unit without cleaning, and was escorted off the property while shouting profanities at the landlord. A new tenant was waiting to get in, and the landlord had to pay the new tenant to clean the rental unit. The landlord's agent also testified that in the real world, it is not possible to make an application for dispute resolution. The landlord's agent sent the tenant a letter, a copy of which was provided in advance of the hearing, showing what deductions were made from the security deposit and why.

The landlord's agent also stated that this hearing ought to take into consideration the reasons for withholding an amount from the security deposit and the landlord's claim for carpet cleaning, blinds, heat vents and cleaning the rental unit. Also, the landlord's agent stated that having read the *Act*, if the Dispute Resolution Officer goes by the letter of the law, the landlord did not comply with the *Act*, but the tenant was difficult and complying with the *Act* was too time-consuming.

The landlord's witness testified that upon arriving at the rental unit, the tenant was upset and the unit was a mess. Floors, walls, sinks and the fridge and stove were filthy, and the witness had to clean the tub and mould in the window tracks. The tenant was in the process of cleaning the kitchen and was sweeping the carpet in the living room when the witness arrived. The witness was to move into the rental unit, and had made an arrangement with the landlord's agent to walk through the rental unit at 3:00. The tenant was supposed to have been moved out by 3:00. The witness also testified that the tenant hit the landlord's agent and the witness with a broom. The landlord's agent went to her vehicle and called the police. The witness also testified that the landlord reimbursed the witness for cleaner purchased for cleaning this rental unit.

Analysis

The *Residential Tenancy Act* is clear with respect to security deposits and pet deposits:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The *Act* also states that a tenant's right to return of the security deposit is extinguished if the tenant fails to participate in a start of tenancy inspection or an end of tenancy inspection, however, the *Act* places the onus on the landlord to schedule the inspections in accordance with the regulations, and must provide the tenant with at least two opportunities to conduct those inspections. I have no evidence before me that the landlord offered at least two opportunities to conduct either of those inspections.

I do not accept the testimony of the landlord's agent that it is not possible to comply with the *Act*. A landlord must comply with the *Act* and must apply for dispute resolution if the landlord feels there is a claim. The security deposit is an amount of money that is held in trust by the landlord and is payable to the tenant within 15 days of the date the tenancy ends or the tenant provides a forwarding address in writing.

A Decision of a Dispute Resolution Officer must also be in accordance with the *Act* and the regulations. The landlord may have a claim against the tenant, but the landlord must apply for dispute resolution to keep the security deposit. There is no application before me from the landlord, and my jurisdiction is under the *Residential Tenancy Act*. The consequence for failing to apply for dispute resolution is that the tenant is entitled to recover double.

The landlord has returned \$20.12, and I find that the tenant is entitled to double recovery of the security deposit less the amount already returned.

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 \$879.88. 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: October 11, 2011.

Residential Tenancy Branch