



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

This is the Tenant's application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), Regulations or the tenancy agreement; and for return of the security deposit and pet damage deposit.

Both parties appeared and gave affirmed testimony.

This matter was originally heard on September 6, 2011, and adjourned in order to allow both parties to provide additional evidence. An Interim Decision was made on September 6, 2011.

Issues to be Decided

- Is the Tenant entitled to compensation for loss of his personal property pursuant to the provisions of Section 67 of the Act?
- Is the Tenant entitled to return of the security and pet damage deposits, pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This month-to-month tenancy began on May 1, 2009 and ended on or about April 5, 2011 as a result of a Notice to End Tenancy for Cause. Prior to being provided the Notice to End Tenancy, the Tenant was a caretaker for the rental property.

The Tenant seeks a monetary award in the amount of \$300.00 for the loss of his furniture; recovery of his transportation costs to file his application, in the amount of \$26.32; and return of the deposits in the amount of \$700.00.

The Tenant testified that he paid a security deposit in the amount of \$350.00 on May 15, 2009, and a pet damage deposit of \$350.00 on June 15, 2009. In evidence, the Tenant provided a copy of the tenancy agreement and a receipt in the amount of \$350.00 "for pet security deposit". The Tenant testified that the Landlords have not returned either deposit to him.

The Landlords' agents testified that the Tenant provided a security deposit, but no pet damage deposit was required. They stated that the receipt provided by the Tenant for the pet damage deposit is fraudulent, that they did not receive a pet damage deposit, and that they do not provide receipts for deposits paid in cash because the tenancy agreement contains the receipt. The Landlords testified that the copy of the tenancy agreement provided by the Tenant is fraudulent. The Landlords also provided a copy of the tenancy agreement in evidence.

The Landlords' agents testified that they did not return the security deposit to the Tenant because he agreed to allow them to retain the security deposit for damages to the rental unit. The Landlords provided a copy of an unsigned note in evidence which states: "#301, keys. You may use the security deposit for cleaning the apartment." The Landlords' agents testified that the rental unit was left in unsanitary condition and was a mess. They stated that the Tenant took what he wanted and left only junk behind, which was taken to the dump, costing the Landlords \$250.00. In evidence, the Landlords provided a receipt dated April 12, 2011, for the cost of removing the Tenant's junk.

The Tenant agreed that the tenancy agreement and receipt he provided in evidence were not copies of the original documents. He submitted that he was advised by an information officer that a "facsimile" of the agreement and receipt would be acceptable, so he reconstructed the documents. He stated that he did not write the note that the Landlords provided in evidence and that he did not agree that the Landlords could retain any of the security deposit. The Tenant testified that the tenancy agreement that the Landlords provided in evidence was fraudulent. The Tenant acknowledged that the rental unit was a mess while he was ill and in hospital, but stated that he cleaned it up before he moved out.

Analysis

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlords pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlords in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant did not provide sufficient evidence with respect to his claim of \$300.00 in compensation for the loss of furniture. He did not provide a list of the lost furniture, or evidence with respect to its worth. The Landlords submitted that the items were junk and provided a copy of a receipt for its disposal. This portion of the Tenant's application is dismissed.

The Tenant has applied to recover the cost of traveling to file his Application for Dispute Resolution. This is an expense that is not contemplated by the Act and this portion of the Tenant's application is dismissed.

The Tenant agreed that the tenancy agreement and receipt were not copies of originals. He stated that he was told facsimiles would suffice as evidence. I believe it is most probable that the Tenant misunderstood the information officer's use of the word "facsimile" and that the information officer was referring to the fact that faxed documents may be provided in evidence. In any event, I do not find that the Tenant has been deliberately fraudulent in providing copies of the documents as he remembered them.

The Landlords' agents testified that they do not provide receipts for deposits made in cash because the tenancy agreement is the proof of payment. It is important to note that the tenancy agreement does not contain a receipt for security or pet damage deposits. The tenancy agreement merely indicates the dates by which the deposits must be received, not the date that any deposit was made. In any event, the Tenant did not provide sufficient evidence that he paid a pet damage deposit and therefore his application for return of that deposit is dismissed.

The Tenant testified that he did not give the Landlords permission to keep his security deposit. The note provided by the Landlords is not signed by the Tenant and the writing is quite different from the Tenant's writing in other documents. There is insufficient evidence that the note is "fraud" on the Landlords' part. For example, it may be a note that one of the Landlords wrote outlining a verbal agreement the Landlords believed they had with the Tenant. The Act allows a landlord to retain an amount from a security deposit if, at the end of the tenancy, the **tenant agrees in writing** that the landlord may retain the amount to pay a liability or obligation of the tenant. In the situation before me, I find that the Tenant did not give the Landlords permission in writing to retain any of the security deposit and I order the Landlords to return the security deposit in the amount of \$350.00 to the Tenant forthwith.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$350.00** for service upon the Landlords. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 24, 2011.

Residential Tenancy Branch