



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

Both parties attended the reconvened hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, to retain the deposit in partial satisfaction of the claim, compensation for damage or loss and filing fee costs.

The tenant applied requesting return of double his deposit and the filing fee costs.

Preliminary Matter

Prior to this reconvened hearing the landlord had intended to make further evidence submissions, but personal events that have occurred which barred the landlord from doing so. Therefore, the landlord withdrew his application. The parties understand that the landlord has the tenant's service address and that he is at liberty to reapply.

Tenant's Claim – Double the Deposit

The tenancy commenced on March 1, 2011, two names are on the first page of the tenancy agreement; only the respondent signed the copy of the agreement supplied as evidence. The respondent confirmed that he had a co-tenant; B.K. Rent was \$1,150.00 per month and a security deposit of \$500.00 plus a \$150.00 pet deposit was paid at the start of the tenancy.

The tenancy ended by agreement on August 31, 2011. The tenant stated he did not vacate the unit until 2 a.m. on September 1, 2011.

The tenant stated that a move-in condition inspection report was not completed; the landlord stated his agent at the time did complete a report but the landlord was not given a copy. A copy of an inspection report submitted as evidence was completed by the landlord after the conclusion the tenancy, in the absence of the tenant. The landlord testified he called the tenant on September 1, 2011, asking he attend an inspection; the

tenant confirmed that he told the landlord he did not need to attend the inspection, as the landlord had failed to complete a report at the start of the tenancy.

The landlord confirmed receipt of the tenant's service address on October 19, 2011, as part of the tenant's application, given to the landlord via registered mail. The landlord applied claiming against the deposit on December 12, 2011.

The tenant supplied no evidence of having given the landlord his written forwarding address prior to submitting his application.

Analysis

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

The amount of deposit owed to a tenant is also contingent on any dispute related to damages and the completion of move-in and move-out condition inspections. In this case there is a dispute; however, the landlord has withdrawn his application and intends to resubmit his claim shortly.

When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord, in this case, did not carry out move-in or move-out inspections or complete condition inspection reports, he lost his right to claim the security deposit for damage to the property.

The landlord is required to complete the inspection reports and give the tenant a copy of the reports. The landlord is also required to give the tenant at least 2 opportunities to complete the move-out inspection report; the final notice should be in writing. There was no evidence before me that this occurred.

The landlord was therefore required to return double the security deposit to the tenant within 15 days of the date the tenancy ended, or the date he received a written forwarding address in writing. However, the tenant has not provided any evidence of having given the landlord his written forwarding address, either prior to the end of the tenancy or after; as required by section 38(1) of the Act.

I find that the provision of a service address, as part of an application for dispute resolution, does not satisfy the requirement that the tenant give the landlord a written forwarding address. Even if the landlord did extinguish his right to claim against the deposit for damages, by failing to complete condition inspection reports; the landlord is

only required to return the deposit within 15 days of having been given a written forwarding address.

Therefore, as the matter of the deposit is before me, on the tenant's application, I find that the tenant is entitled to return of the \$500.00 security deposit and the \$150.00 pet deposit; the application for double the deposit is dismissed.

As the tenant failed to provide a forwarding address in writing, which would have triggered the landlord's requirement to return the deposit; I decline filing fee costs to the tenant.

Conclusion

I find that the tenant has established a monetary claim, in the amount of \$650.00, which is comprised of the pet and security deposit.

Based on these determinations I grant the tenant a monetary Order for \$650.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The request for the doubled portion of the deposit is dismissed.

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: January 27, 2012.

Residential Tenancy Branch