



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This matter dealt with an application by the Tenant for the return of a security deposit plus compensation equal to the amount of the deposit due to the Landlord's alleged failure to return it as required by the Act and to recover the filing fee for this proceeding.

The Landlord filed written submissions that alleged a claim against the security deposit for unpaid utilities. However as the Landlord had not filed an application of his own for Dispute Resolution to make such a claim, I was unable to consider his "monetary claim" during the hearing. *At the end of the hearing*, the Landlord sought to have two witnesses (who had given written statements) attend the hearing to give oral evidence. Only one of those statements included a telephone number. The dispute resolution officer attempted to contact the witness at this telephone number on 2 separate occasions however the witness did not answer. The Landlord then stated that he had other contact numbers for these witnesses but did not have them with him so he needed an adjournment or alternatively, the proceedings halted so that he could dial out of the conference call and then dial back in once he obtained the contact information.

The Landlord said he did not provide contact numbers because he believed his witnesses' oral evidence would not be necessary. RTB Rule of Procedure 11.9 says in part, "Parties are responsible for having their witnesses available in-person or by conference call for the dispute resolution proceeding." Consequently, it is a party's responsibility to ensure that they provide contact numbers for their witnesses at the hearing in the event their statements are disputed and they need to be questioned on them. RTB Rule of Procedure 11.10 says a Dispute Resolution Officer will consider any prejudice to the other party when deciding whether to grant the request to (among other things) adjourn the dispute resolution proceeding to allow a witness to attend. I find that the Landlord has had 2 months to prepare for the dispute resolution proceeding and that in the circumstances, it would be unfair to the Tenant to delay the proceedings further by granting the Landlord an adjournment so that he could now arrange to have his witnesses present.

Issue(s) to be Decided

1. Is the Tenant entitled to the return of a security deposit?

Background and Evidence

This tenancy started in March 2010 and ended on December 1, 2010. Rent is \$750.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$375.00 at the beginning of the tenancy.

The Tenant said she sent the Landlord a letter in August 2011 which contained her forwarding address in writing. The Landlord admitted that he received this letter sometime in September 2011. The Parties agree that the Landlord has not returned the Tenant's security deposit and the Tenant did not give the Landlord written authorization to keep it. The Parties also agree that during the first week of December, 2010, they met at the rental property to do a move out condition inspection. The Tenant claimed that the Landlord advised her that they had to wait until the upstairs tenant returned to gain access to the property. The Tenant said when the upstairs tenant returned to the rental property, the Landlord then advised her that because she owed approximately \$350.00 for utilities to the upstairs tenant, he would not be returning the Tenant's security deposit. The Tenant also claimed that the Landlord told her there was no point in conducting a move out inspection so she left.

The Landlord denied that he told the Tenant he would not do a move out inspection. The Landlord said he told the Tenant that he wanted her to deal with the unpaid utilities she owed to the upstairs tenant before doing the inspection. The Landlord claimed that the Tenant became angry and stormed off. The Landlord said that as he had no contact information from the Tenant, he was unable to re-schedule a move out inspection.

Analysis

Section 38(1) of the Act says that a Landlord has 15 days from either the end of the tenancy or the date he receives the Tenant's forwarding address in writing (whichever is later) to either return the Tenant's security deposit or to make an application for dispute resolution to make a claim against it. If the Landlord does not do either one of these things and does not have the Tenant's written authorization to keep the security deposit then pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit.

Section 36 of the Act says that the right of a tenant to the return of a security deposit is extinguished if the Landlord has complied with section 35(2) of the Act [*2 opportunities for inspection*], and the tenant has not participated on either occasion.

I find that the tenancy ended on or about December 1, 2010 and that the Tenant provided the Landlord with her forwarding address in writing on September 30, 2011 *at the latest*. I also find that the Landlord has not returned the Tenant's security deposit of \$375.00, did not file an application for dispute resolution to keep the security deposit and did not have the Tenant's written authorization to keep the security deposit.

However, the Landlord argued that the Tenant's right to the return of the security deposit was extinguished because she refused to participate in the move out inspection. The Tenant argued that she attended the rental property for the purpose of doing a move out inspection but that the Landlord refused to do one.

Having reviewed the evidence of both Parties, I find that the Tenant did attend the rental property on or about December 1, 2010 for the purpose of participating in a move out inspection. Given the contradictory evidence of the Parties, however, I cannot conclude that the Landlord advised the Tenant that he would not do a move out inspection. Instead I accept the witness statements of the Landlord and find that the Landlord advised the Tenant that he would not do the move out inspection until the Tenant dealt with and paid any outstanding utility amounts to the upstairs tenant. I find that the Landlord had no right to make the move out inspection conditional on the Tenant settling any unpaid utility bills with the upstairs tenant and in doing so I find that the Landlord prevented the Tenant from participating in a move out inspection.

In other words, I find that the Tenant did not refuse to participate in a move out inspection but rather refused to have to deal with the other tenant of the rental property on other matters (unrelated to the condition of the rental unit) before being allowed to do the move out inspection. As a result, I find that pursuant to s. 38(6) of the Act, the Landlord must return double the amount of the security deposit in the amount of \$750.00. As the Tenant has been successful in this matter, I also find that she is entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee she paid for this proceeding.

On a final note, RTB Policy Guideline #1 states at p. 9 as follows:

"1. A term of a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy is likely to be found unconscionable as defined by the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or her agent, may claim against the Landlord for the other tenants' share of the unpaid utility bills."

Conclusion

A Monetary Order in the amount of **\$800.00** has been issued to the Tenant and a copy of it must be served on the Landlord. If the amount is not paid by the Landlord, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 31, 2012.

Residential Tenancy Branch