Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, OPL, FF

Introduction

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, an Order of possession for landlord's use and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed receipt of the tenant's evidence on March 17, 2012; this evidence included a 1 page written submission and copies of several text messages that were not considered during the hearing. The tenant was able to provide oral submissions.

The tenancy has ended; the landlord does not require an order of possession.

The landlord stated that she had intended to include a claim against the deposit; a good deal of discussion in relation to this submission occurred; both parties agreed that the landlord did intend to claim against the deposit and the application was amended to include that claim. I explained that even if the application was not amended I would likely apply section 62(3) of the Act, in consideration of the deposit.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $131.15 for damage to the rental unit?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced in February 2008; a deposit in the sum of $800.00 was paid. The tenancy ended on December 31, 2011, as the result of a Notice ending tenancy for landlord's use. Neither a move-in or move-out condition inspection report was completed.

The tenant met with the landlord's brother on January 2, 2012, to provide the keys and view the home; the tenant agrees a door had been removed from a doorway and told the landord it was in the garage.

The landlord testified she received the tenant's written forwarding address sent via text message on January 15, 2012; the parties communicated using this written form. The tenant stated she also gave the landlord's brother her written address on January 2, 2012.

On January 15, 2012, the tenant retrieved a cheque from the landlord in the sum of $668.00; the landlord had made a deduction for the purchase of a new door, in the absence of written approval of the tenant. No verification of this expense was submitted. The tenant confirmed she has cashed the cheque.

On January 16, 2012, the landlord submitted the claim for damages; intending to claim against the deposit.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that when a landlord claims against the deposit, any amount remaining should be ordered to the tenant. I find this a reasonable stance.

The landlord has made a claim against the deposit for costs that she has previously deducted from the deposit. No verification of the claim was provided; no inspection reports were completed and the tenant disputed the claim, testifying that the door was in the home and had not been removed.

In the absence of evidence verifying the claim and condition inspection reports setting out the state of the unit at the start and end of the tenancy and, the absence of verification of the loss, I find that the landlord has failed to prove her claim for damage and that the claim is dismissed.

Residential Tenancy branch policy suggests:

> *The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit* ***is extinguished if****:*
> - ***the landlord does not offer the tenant at least two opportunities for inspection as required by the Act****, and/or*
> - *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*
>
> (Emphasis added)

I find this to be a reasonable stance.

Pursuant to section 24(1) of the Act, I find that the landlord's right to claim against the deposit was extinguished. The landlord must arrange a move-in condition inspection report and when she failed to do so, she extinguished her right to claim against the deposit for damages.

Therefore, when the landlord received the tenant's written forwarding address on January 15, 2012, as provided by section 38(1) of the Act, the landlord was required to return the deposit, in full. The landlord would then have been at liberty to submit a claim for compensation any time up to 2 years beyond the end date of the tenancy. It appears the landlord believed that if she claimed against the deposit within 15 days, she was in compliance with the legislation. That would have been true if the tenant had extinguished her right to return of the deposit.

Section 38(1) of the Act provides:

> ***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.*

> ***(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1)*** **[tenant fails to participate in start of tenancy inspection]** ***or 36 (1)*** **[tenant fails to participate in end of tenancy inspection].**
>
> (Emphasis added)

As the landlord failed to comply with section 38(1) of the Act, by repaying the total deposit within 15 days of receipt of the tenant's address, I find; pursuant to section 38(6) of the Act, that the tenant is entitled to return of double the $800.00 deposit; less $668.00 previously paid.

A copy of the *Guide for Landlords and Tenants in British Columbia* is enclosed for each party.

Conclusion

The landlord's claim is dismissed.

I find that the tenant has established a monetary claim, in the amount of $932.00, which is comprised of double the deposit paid; less $668.00 returned to the tenant.

Based on these determinations I grant the tenant a monetary Order in the sum of $932.00. 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.

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: March 23, 2012.

Residential Tenancy Branch