



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing concerns the landlord's application to retain the security deposit and pet damage deposit / and to recover the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, what eventually became a month-to-month tenancy began on July 15, 2011. Monthly rent of \$1,395.00 was due and payable in advance on the first day of each month. A security deposit of \$697.50 and a pet damage deposit of \$697.50 were both collected. A move-in condition inspection report was completed with the participation of both parties. However, there is conflicting testimony around whether or not the tenant was provided with a copy of the report within 7 days following its completion, as required by section 18 of the Regulation which speaks to **Condition inspection report**.

The tenant gave 1 month's notice in May of her intent to end the tenancy effective June 30, 2012. As to the move-out condition inspection, male landlord "DEP" undertook an inspection of the unit in the presence of the tenant on June 28, 2012. However, the landlord declined to complete the move-out condition inspection report itself in the absence of his wife, female landlord "SP." In the alternative, the landlords sought to have the tenant return to the unit from her new residence within the next day or two in order to complete the move-out condition inspection report. For any number of reasons a gathering of all three individuals together for this purpose never occurred, and the landlords completed the move-out condition inspection report in the absence of the tenant.

The tenant claims that she was not provided with a copy of the move-out condition inspection report until she received the landlord's documentary evidence package for the purposes of the hearing. In this regard, the attention of the parties is drawn to section 18 of the Regulation, as above, which requires the landlord to provide a copy of the move-out condition inspection report to the tenant within 15 days after the later of "the date the condition inspection is completed" and "the date the landlord receives the tenant's forwarding address in writing."

Prior to the end of tenancy, during the month of June there were several showings of the unit to prospective new renters. The landlords take the position that the unit was insufficiently clean and tidy during showings to attract prospective renters. Further, the landlords claim that the behaviour of the tenants' dogs was such that prospective new renters were discouraged from renting. The unit was vacant during July and new renters were found effective August 1, 2012. In the result, the landlords seek to retain both deposits in order to recover the loss of rental income for July.

The landlords have not applied to retain the security and pet damage deposits in order to offset costs arising from labour and materials related to cleaning they claim was required after the tenant vacated the unit.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Arising from the particular circumstances of this dispute, the attention of the parties is especially drawn to the following sections of the Act:

Section 23: Condition inspection: start of tenancy or new pet

Section 24: Consequences for tenant and landlord if report requirements not met

Section 35: Condition inspection: end of tenancy

Section 36: Consequences for tenant and landlord if report requirements not met

Sections 23 and 35 of the Act both provide that "the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection." Sections 24 and 36 of the Act both provide that the landlord's right to claim against the security deposit or pet damage deposit is extinguished if the landlord fails to comply with the requirement to offer at least 2 opportunities for the inspection.

Section 17 of the Regulation speaks to **Two opportunities for inspection**:

17(1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.

(2) If the tenant is not available at a time offered under subsection (1),

(a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and

(b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the **approved form. [emphasis added]**

(2) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

The “**approved form**” is # RTB-22, “Notice of Final Opportunity to Schedule a Condition Inspection.” Based on the documentary evidence and testimony of the parties, I find that the landlord failed to provide the tenant with a second opportunity in the approved form to complete the move-out condition inspection. Accordingly, pursuant to the above statutory provisions I find that the landlord's right to claim against either deposit is extinguished.

I also find there is insufficient evidence that the landlord's failure to find new renters for July was the direct result of any breach by the tenant of the Act, Regulation or tenancy agreement.

Following from all of the above, the landlord's application to retain both deposits is hereby dismissed. The landlord is ordered to repay the tenant the security deposit and the pet damage deposit in the total amount of \$1,395.00, and I hereby issue a monetary order in favour of the tenant to that effect.

As the landlord has not succeeded with the main thrust of the application which is to retain both deposits, the application to recover the filing fee is also hereby dismissed.

Conclusion

The landlord's application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,395.00**. Should it be necessary, this order may be served on the landlord, filed in the 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: September 19, 2012.

Residential Tenancy Branch