



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD, FF / MNSD, FF

Introduction

This hearing concerns 2 applications: i) by the landlord for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / retention of all or a portion of the security deposit and pet damage deposit / and recovery of the filing fee; and ii) by the tenant for a monetary order as compensation for the double return of all or a part of the security deposit and pet damage deposit / and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 26, 2010. Monthly rent of \$1,300.00 was due and payable in advance on the first day of each month. A security deposit of \$650.00 and a pet damage deposit of \$650.00 were both collected on September 21, 2010. There is no evidence of a move-in condition inspection report.

By letter dated May 30, 2012, the tenant gave notice of her intent to vacate the unit effective June 30, 2012. The landlord testified that the tenant gave her this letter on June 3, 2012, and the tenant does not dispute this. Subsequently, the tenant vacated the unit on June 30, 2012 and provided the landlord with her forwarding address at that same time. There is no evidence of a move-out condition inspection report.

Following her receipt of the tenant's notice, the landlord undertook to advertise for new renters on craigslist. Ultimately, a new renter took possession of the unit effective July 15, 2012.

After making certain deductions from the security deposit and pet damage deposit in the total amount of \$856.75, by cheque dated July 10, 2012, the landlord repaid the balance of the combined deposits to the tenant in the amount of \$443.25 (\$1,300.00 – \$856.75).

The tenant takes the position that the deductions from her combined deposits were unauthorized and that her entitlement includes, but is not limited to, the double return of her security deposit and pet damage deposit.

During the hearing the parties exchanged views on some of the circumstances surrounding the dispute and undertook to achieve at least a partial resolution.

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

Section 63 of the Act speaks to the **Opportunity to settle dispute**, and provides that the parties may attempt to settle all or a portion of their dispute during a hearing. Pursuant to this provision, certain aspects of the dispute were settled between the parties. Specifically, it was agreed as follows:

RECORD OF SETTLEMENT

- that the tenant authorizes the landlord to withhold the following specific amounts from the combined security / pet damage deposits:
 - i) \$30.44 (Fortis BC Gas)
 - ii) \$14.47 (Fortis BC Gas)
 - iii) \$74.33 (Fortis BC Gas)

Total Amount Agreed to for Withholding: **\$119.24***

Based on the documentary evidence and testimony, the various remaining aspects of the respective claims and my findings around each are set out below.

LANDLORD

\$86.63: ½ the cost of professional carpet cleaning. The tenant testified that she herself cleaned the carpets at the end of tenancy using borrowed equipment. The landlord testified that professional cleaning was still subsequently required in order to remove signs of pet urine. Evidence submitted by the landlord includes a receipt in the total amount of \$173.26. Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and provides under the heading of CARPETS, in part as follows:

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.
4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

In view of all of the foregoing, I find on a balance of probabilities that the landlord has established entitlement to half the cost of professional carpet cleaning as claimed.

\$650.00: rent for the period July 1 – 14, 2012. Section 45 of the Act speaks to **Tenant’s notice**, and provides in part as follows:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 52 of the Act addresses **Form and content of notice to end tenancy**, and provides in part as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,...

Despite whatever may have been the nature of verbal conversations between the parties, and despite the understandings that may have been reached between them concerning an end to tenancy, I find that while the tenant's written notice is dated May 30, 2012, it was given to the landlord on June 3, 2012. Accordingly, I find that the tenant's manner of giving notice does not comply with the above statutory provisions.

Further, I am satisfied that, pursuant to section 7 of the Act which addresses **Liability for not complying with this Act or a tenancy agreement**, the landlord undertook to mitigate her loss of rental income for July by advertising in a timely fashion for new renters after receiving the tenant's notice. In the result, I find that the landlord has established entitlement to the full amount claimed.

Sub-total of Entitlement: **\$736.63*** (\$86.63 + \$650.00).

TENANT

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security and / or pet damage deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security and / or pet damage deposit and must pay the tenant double the amount of the security and / or pet damage deposit.

I find that the tenancy ended on June 30, 2012. There is no evidence that the tenant provided the landlord with written authorization to retain any portion of the security and / or pet damage deposit. Further, the landlord filed her application for dispute resolution, seeking to retain all or a portion of the security and / or pet damage deposit on July 30, 2012, which I find is outside of the statutory 15 day period. In the result, I find that as the landlord did not comply with the relevant provisions set out in section 38 of the Act,

the tenant has established entitlement to the double return of the security and / or pet damage deposit in the total amount of \$2,600.00 [(2 x \$650.00) + (2 x \$650.00)].

However, the tenant's statutory entitlement is offset by \$855.87, which is comprised of \$119.24, as agreed to by the parties, plus the amount of \$736.63 to which I have found the landlord has established entitlement.

The balance owed to the tenant is therefore calculated to be \$1,744.13 (\$2,600.00 - \$855.87). Once again, however, as the landlord has already made payment to the tenant of \$443.25, the net balance owed to the tenant is \$1,300.88 (\$1,744.13 - \$443.25).

The applications for recovery of the filing fee are both hereby dismissed.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,300.88**. 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 28, 2012.

Residential Tenancy Branch