



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the evidence was discussed. The landlord sent in two packages of evidence, of which the tenant acknowledged receipt. The tenant said that he faxed into the Residential Tenancy Branch ("RTB") a copy of the condition inspection report; however this evidence was not in the file and after a search of the records, I could not locate the document. The landlord had not submitted a copy of the condition inspection report; however both parties agreed that they had a copy and could fax the report to the RTB after the hearing.

I allowed both parties the opportunity to do so, and both parties did fax in their respective copies within an hour of the hearing and it was reviewed and considered for purposes of this decision.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for a return of their security deposit and to recover the filing fee?

Background and Evidence

This tenancy began on July 1, 2011, ended on June 30, 2012, monthly rent was \$1200.00, and the tenants paid a security deposit of \$600.00 on or about June 18, 2012.

The parties agreed that the tenants provided their written forwarding address on June 30, 2012, on the condition inspection report and that the landlord has returned the amount of \$150.00 from the tenants' security deposit.

The tenant said that he did not agree to any deductions by the landlord and wanted a return of their full security deposit.

The tenant said that although he received the landlord's cheque, he has not cashed it.

In response, the landlord said that the security deposit was not returned to the tenants or an application filed due to the tenants agreeing that the landlord could retain their entire security deposit of \$600.00 for cleaning of the rental unit, which was shown by their signature on the condition inspection report. Despite having the tenants' alleged authority to retain the full security deposit, the actual amount to clean was less than \$600.00 and therefore the landlord returned \$150.00.

The landlord pointed to her photographic evidence as proof of the condition of the rental unit. The landlord also provided a receipt for costs incurred.

In response to the landlord's submissions, the tenant denied that they authorized the landlord to retain all of their security deposit and that there was no amount listed in the security deposit statement box on the condition inspection report when the tenants signed it. The tenant said that this amount was later filled in after the tenants' signed the document.

Due to the conflicting testimony, I called into the conference the building manager, LC (LC), who attended the move out inspection. LC said that the rental unit was so dirty that she had to call the landlord's agent to speak with her about the charges. LC said that the landlord's agent informed her to write the amount of \$600.00 and have the tenants sign the document, which she did.

In response, the tenant said that he and LC discussed a charge for cleaning, but that he would never authorize the landlord to keep their entire security deposit.

Analysis

Based on the oral and written evidence, and on a balance of probabilities, I find as follows:

A review of the landlord and tenant's copies of the condition inspection report shows the space for the move-in inspecting tenant's name, the move-in inspection date, the condition of the rental unit at the move-in, the landlord's signature at move-in, number of keys given at move-in and the condition of the smoke alarm are all left blank on the condition inspection report. Curiously, the tenant's signature appears on the move-in inspection signature line and dated June 30, 2012, the date of the move-out inspection.

I therefore conclude that there was no move-in inspection at the start of this tenancy.

Under section 24 (2) of the Act, a landlord is required to conduct a move-in inspection and complete a condition inspection report in accordance with the Act and Regulations. In the event the landlord fails to comply with this section, the landlord's right to make a claim against the tenants' security deposit is extinguished.

Further pursuant to section 38(5) of the Act, as the landlord had extinguished their right to claim against the tenants' security deposit, the landlord lost their right to obtain the tenants' consent to withhold any portion of their security deposit.

Residential Tenancy Branch Policy Guideline 17 requires that I order the return of double the security deposit if the landlord does obtain the tenant's written consent to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act. This is a requirement whether the landlord has a valid monetary claim.

The landlord was therefore required to return the security deposit to the tenants within 15 days of the later of the two of the tenancy ending and having received the tenants' written forwarding address. The landlord received the tenants' written forwarding address on June 30, 2012, the last day of the tenancy, and did not return the security deposit within 15 days of that date.

Conclusion

Due to the above, I find the landlord must pay the tenants double the base amount of their security deposit of \$600.00.

I find the tenants are entitled to recovery of their filing fee of \$50.00.

I find the tenants have established a monetary claim of \$1250.00, comprised of their security deposit of \$600.00, doubled, and the filing fee of \$50.00. From this amount I have deducted the amount of \$150.00, which was a partial refund of the tenants' security deposit previously paid to the tenants.

I am enclosing a monetary order for \$1100.00 with the tenants' Decision. This order is a legally binding, final order, and should the landlord fail to pay the tenants this amount without delay, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court.

If for some reason the cheque issued by the landlord has now become non-negotiable, the tenants may apply for monetary order reflecting the amount of their monetary award of \$1250.00.

Due to the above, I did not find it necessary to address the tenant's assertion that he did not agree that the landlord could retain the entire security deposit.

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* and is being mailed to both the applicant and the respondent.

Dated: September 27, 2012.

Residential Tenancy Branch