



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: MNSD, FF
For the landlord: MND, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

The landlord applied for a monetary order for alleged damage to the rental unit and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, the landlord/owner's son (hereafter referred to as "landlord") confirmed that he had received the tenant's evidence. The landlord was questioned about his evidence, of which none was in the application file. The landlord said he submitted 22 pages of evidence with his application and the tenant confirmed receipt of this evidence.

I informed the parties that we would proceed with the hearing, and the landlord was allowed to testify about the evidence. I note that the landlord testified thoroughly about each piece of documentary evidence and questions were asked about the evidence.

Preliminary matter, at the conclusion of the hearing, I informed the landlord that he was allowed one week from the day of the hearing to submit his evidence package to the Residential Tenancy Branch ("RTB"), the failure of which would result in a Decision based upon his testimony only. The parties were also informed that in the event I received the landlord's evidence and had follow-up questions, I would re-convene this hearing. Both parties acknowledged their understanding.

As a further preliminary matter, the landlord's was discovered subsequent to the hearing and I thoroughly reviewed the landlord's original evidence and compared that evidence with his oral submissions.

I have reviewed all testimony and other evidence; however I refer to only the evidence relevant to the issues and findings in this decision.

Issue(s) to be Decided

1. Is the tenant entitled to a return of her security deposit, doubled, and to recover the filing fee?
2. Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on August 1, 2010, monthly rent was \$2250.00 and the tenant paid a security deposit of \$1125.00 at the beginning of the tenancy.

The parties agreed that the tenancy ended on June 15, 2012, although the tenant moved out on or about June 7, 2012. The parties agreed that the tenant had paid all rent due.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any of the tenant's security deposit.

Tenant's application-

The tenant's claim is for her security deposit of \$1125.00, doubled, and for recovery of the filing fee.

In support of her application, the tenant said that she gave her written forwarding address to the landlord/owner at the end of May 2012 in the lobby of the building where her rental unit is located. The tenant said that the landlord/owner also resided in the building in another unit and that the two parties met near the end of May in the lobby in order for the tenant to give the landlord/owner a new rent cheque for half the month of June, as agreed upon, and for the landlord/owner to return the tenant's prepaid rent cheque. The tenant further explained that she had only been to the landlord/owner's residence just once during the length of the tenancy and it was not uncommon that they would meet in the lobby.

The tenant said that despite several requests, the landlord failed to return her security deposit, leading to her application being filed on July 13, 2012, with service of the Notice of Hearing and application (the "Hearing Package") on that date via registered mail.

The attending landlord acknowledged receiving the Hearing Package within a few days of that date.

In response, when questioned, the landlord denied that the landlord/owner received the tenant's written forwarding address as described by the tenant and further denied being aware of the tenant's forwarding address when he received the tenant's Hearing Package and application requesting a return of her security deposit, which also listed her address on the front page.

Landlord's application-

The landlord's monetary claim is \$2398.19, comprised of unauthorized changes to the rental unit, including \$1900 + HST for the bathrooms and \$241.24 + HST for the lights.

The landlord said that the tenant changed the light fixtures and made changes to the two bathrooms. In support the landlord directed my attention to the pictures of the rental unit and gave testimony about the pictures.

The landlord said it was not possible to match the original paint and fixtures and that he had to source the material, leading to extra expense.

The landlord's evidence of costs included estimates of work to be done. When questioned, the landlord stated that no repair or replacement work had been done as of the day of the hearing and that new tenants had moved into the rental unit.

In response, the tenant denied making any changes to the rental unit and questioned the photographs, stating that the photos were not of the rental unit. One discrepancy pointed out by the tenant showed that the bathroom counters were not the same in two different photographs.

The tenant said that after she gave notice of her intent to vacate, the landlord had showings for the rental unit and never mentioned the state of the rental unit.

The tenant said that the landlord/owner would not perform a move-in inspection and no move-out inspection was ever scheduled.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Tenant's application-

Under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, I accept that the tenant gave the landlord/owner her written forwarding address on or before the last day of May 2012 when the tenant exchanged a June rent cheque for one previously given to the landlord/owner. In reaching this conclusion, I find the tenant's testimony clear and consistent, providing details of the event and location, and was undisputed as the landlord/owner was not available for testimony. I cannot accept the testimony of the landlord/owner's son as he was not present at this time.

At the very least, the landlord had the tenant's written forwarding address when she received the tenant's application for dispute resolution by July 18, 2012, seeking a return of the security deposit. Still the landlord did not file her own application until September 17, 2012, the week prior to the tenant's hearing.

As I have found that the landlord had received the tenant's written forwarding address by May 31, 2012, the landlord had 15 days from June 15, 2012, the last day of the tenancy, to file an application for dispute resolution claiming against the security deposit or return the tenant's security deposit. As the landlord failed to file her application until September 17, 2012 and did not return the tenant's security deposit, I find the tenant has established a monetary claim of double recovery of her security deposit of \$1125.00.

Due to her successful application, I also award the tenant recovery of her filing fee of \$50.

Landlord's application-

Under the Act, when a landlord fails to conduct and properly complete a condition inspection report, the landlord's claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not carry out move-in or move-out inspections or complete condition inspection reports, she lost her right to claim the security deposit for damage to the property.

Additionally, I also find the landlord submitted insufficient evidence that the tenant left the rental unit in a state which required repairing or remediation.

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections

23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet her obligation under of the Act of completing the inspections and therefore there is no independent record of the condition of the rental unit at the start or at the end of the tenancy.

I do not find the photographs provided by the landlord to be persuasive or convincing as there were no photographs of the same location or depiction at the start of the tenancy nor were they clearly identified or dated by the landlord.

Had I not dismissed the landlord's application for having extinguished her right to claim against the security deposit, I would still make the decision to dismiss her application as the landlord failed to submit verification of a loss, such as with receipts, invoices or payment records, step three of her burden of proof.

I therefore dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss her request for recovery of the filing fee.

Conclusion

The tenant has established a monetary claim of \$2300.00, comprised of her security deposit of \$1125.00, doubled, and for recovery of the filing fee of \$50.00.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$2300.00, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant 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.

The landlord's application is dismissed.

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 28, 2012.

Residential Tenancy Branch