



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenant's application filed July 16, 2012: MNSD; FF

Landlord's application filed August 3, 2012: MND; MNSD; FF

Introduction

This Hearing was convened to consider cross applications. The Tenant seeks a monetary order for double the amount of the security deposit; and to recover the cost of the filing fee from the Landlords.

The Landlord seeks a Monetary Order for damages to the rental unit; to apply a portion of the security deposit in satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

The Landlord acknowledged that he received the Tenant's Notice of Hearing documents and copies of his documentary evidence by registered mail. The Tenant did not provide sufficient evidence that he served the female Landlord with the Notice of Hearing documents and therefore the Tenant's application against the female Landlord is dismissed.

The Tenant acknowledged receipt of the Landlord's Notice of Hearing documents and copies of his documentary evidence, also by registered mail.

Issues to be Decided

1. Is the Tenant entitled to compensation in the equivalent of double the amount of the security deposit?
2. Is the Landlord entitled to a monetary award for damages to the rental unit caused by the Tenant?
3. May the Landlord apply a portion of the security deposit in satisfaction of his monetary award?

Background and Evidence

The parties agreed that this tenancy began on January 15, 2012; that rent was \$650.00, due on the 15th day of each month; that the Tenant paid a security deposit in the

amount of \$650.00 to the Landlord at the beginning of the tenancy; and that the tenancy ended on June 15, 2012.

The Landlord did not complete Condition Inspection Reports at the beginning or the end of the tenancy that comply with the requirements of Sections 23 and 35 of the Act and Part 3 of the Regulation.

The Landlord acknowledged that he received the Tenant's written notification of his forwarding address on June 22, 2012. The Landlord testified that he returned \$330.00 of the security deposit to the Tenant on July 7, 2012, by mail. The Tenant acknowledged receipt of the cheque and stated that he had not cashed it.

The Landlord stated that he did not return all of the security deposit because the Tenant had broken a screen door handle and the kitchen faucet and that he had pulled some screws out of a door and deeply gouged the wooden floors. The Landlord stated that there is an addendum to the tenancy agreement that provides:

- Strata fines may be taken directly from the security deposit.
- There is no smoking allowed in the rental unit.
- There are no pets allowed in the rental unit.
- There will be a final professional clean at the end of the tenancy and the cost will be deducted from the security deposit.
- That it is agreed that the security deposit will be equal to one month's rent.

The Tenant acknowledged that the screws holding the bathroom door came away from the wall when he hung his towel on the door. He stated that he caused no additional damage. The Tenant said that the Landlord did not provide him with any proof of damages; for example, photographs.

Analysis

Regarding the Landlord's Application

When a party claims for damage or loss, the onus is on that party to establish their claim on the civil standard, the balance of probabilities. For the Landlord to prove his loss, and have the Tenant pay for that loss, requires the Landlord to satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenant in violation of the Act,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, I find that the Landlord did not establish his claim. The Landlord did not provide sufficient documentary evidence that the damage existed. The Landlord did not comply with the provisions of the Act with respect to performing condition inspections at the beginning and at the end of the tenancy and I find that he did not establish that any damage occurred due to the actions or neglect of the Tenant. The Landlord provided no invoices or receipts to substantiate his claim in the amount of \$320.00. For these reasons, I find that the Landlord has failed to prove his claim and his application is dismissed.

It is important to note that 3 of the 5 terms of the addendum to the tenancy agreement that the Landlord provided in his testimony are contrary to the Act. The Landlord was advised of this during the course of the Hearing. A landlord must not require or accept a security deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent. Security deposits **must** be applied in accordance with the provisions of the Act. Section 5 of the Act provides that parties may not contract out of the Act or regulations and that any attempt to do so is of no effect.

Regarding the Tenant's application

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent in writing to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit **in full**, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord testified that he received the Tenant's forwarding address in writing on June 22, 2012. The Landlord did not return all of the security deposit or file for dispute resolution against the security deposit within 15 days of receipt of the Tenant's forwarding address.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to compensation pursuant to the provisions of Section 38(6) of the Act. The Tenant was advised during the Hearing that he can cash the cheque in the amount of \$330.00 that he received from the Landlord.

I find that the Tenant is entitled to a monetary award, calculated as follows:

| | |
|--|------------------|
| Double the security deposit (\$650.00) x 2 | \$1,300.00 |
| Less amount returned by the Landlord | <u>-\$330.00</u> |
| TOTAL | \$970.00 |

The Tenant has been successful in his application and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

The Tenant's application against the female Landlord is **dismissed without leave to reapply**.

I hereby provide the Tenant a Monetary Order in the amount of **\$1,020.00** for service upon the male Landlord. This Order may be filed in the Provincial Court 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: October 04, 2012.

Residential Tenancy Branch