



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD CNC

Introduction

This is an application under the *Residential Tenancy Act* (the “Act”) by the tenant for the return of her security deposit, and to cancel a Notice to End Tenancy for Cause (the “Notice”).

The tenant and an agent for the landlord attended the hearing. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions during the hearing.

The landlord confirmed receipt of the tenant’s evidence prior to the hearing and that she had the opportunity to review the evidence. The landlord evidence to the Residential Tenancy Branch, however, testified that they did not serve the tenant. As a result of the landlord failing to serve the tenant in accordance with the rules of procedure, the landlord’s evidence was excluded from the hearing.

Preliminary Matters

At the outset of the hearing, the tenant confirmed that she has already vacated the rental unit, and as a result, withdrew the portion of her application relating to cancelling the Notice. The hearing proceeded with the tenant’s application for the return of her security deposit.

The landlord was advised during the hearing, that she was unable to initiate a claim for damages through the tenant’s application. As a result, the landlord was reminded that she could file a claim for damages up to two years after the end of the tenancy.

Issue to be Decided

- What should happen with the security deposit under the *Act*?

Background and Evidence

The tenancy began on December 1, 2010 and ended on October 31, 2012 when the tenant vacated the rental unit. Monthly rent in the amount of \$750.00 was due on the first day of each month and was increased over the course of the tenancy to \$775.00 per month. The tenant paid a security deposit of \$375.00 at the start of the tenancy.

The tenant is seeking the return of her security deposit in the amount of \$375.00. The landlord stated that the tenant verbally agreed to give the landlord her security deposit as the tenant did not remove her furniture from the rental unit by October 31, 2012. The tenant confirmed that she did verbally agree to let the landlord keep her security deposit in full as she was unable to remove her furniture until approximately November 7, 2012.

The parties disputed each other's testimony regarding the tenant providing a forwarding address. The tenant claims she provided her forwarding address on October 31, 2012 and the agent disputed the tenant's testimony. The agent testified that the tenant asked her not to contact her mother; which was the address provided verbally by the tenant to the agent at the end of the tenancy.

Analysis

Based on the oral testimony, documentary evidence, and on a balance of probabilities, I find the following.

Both parties agree that there was a verbal agreement made between them in November 2012 that due to the tenant not removing her furniture at the end of the tenancy, the landlord could keep the tenant's security deposit of \$375.00 as compensation. I accept that the compensation was for overholding as the rental unit was not left fully vacant and contained the furniture of the tenant until approximately November 7, 2012.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The parties disputed each other's testimony regarding a forwarding address being provided at the end of the tenancy. I find the tenant failed to prove that a forwarding address was provided in writing to the landlord, and therefore, has failed to meet the burden of proof that the landlord breached section 38 of the *Act*.

I find it reasonable that the landlord accepted the undisputed verbal agreement made in November 2012, where the tenant surrendered her security deposit of \$375.00 to the

landlord as compensation for leaving furniture in the rental unit until approximately November 7, 2012. Therefore, I **dismiss** the tenant's application in full, without leave to reapply, as the tenant has already agreed to surrender her security deposit to the landlord.

Conclusion

I dismiss the tenant's application in full, without leave to reapply.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 19, 2012

Residential Tenancy Branch