



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss, 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, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

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

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

Background and Evidence

The undisputed evidence is that this tenancy was to begin on August 1, 2012, according to the testimony and July 31, 2012, according to the tenancy agreement, monthly rent was to be \$550.00, and the tenant paid a security deposit of \$225.00 and a pet damage deposit of \$200.00, on or about July 1, 2012.

The tenant's monetary claim is in the amount of \$1425.00, comprised of her security deposit and pet damage deposit doubled, and reimbursement of her August rent.

The tenant submitted that the rental unit was unfit to move into and due to its condition. The tenant said that the rental unit was in “desperate” need of repairs and maintenance. As a result, the tenant never moved into the rental unit.

By way of explanation the tenant said that when she first viewed the rental unit, it was not empty and that there was never a move-in inspection. The tenant said that as the rental unit was so unfit that she could not move in, she is entitled to a return of her August rent.

When questioned, the tenant said that she had taken photographs of the rental unit, but did not send them in as evidence.

The tenant said that she gave her notice of ending the tenancy and her forwarding address to the landlord in a letter, dated August 20, 2012, and that she received a refund in the amount of \$400.00. The landlord acknowledged receiving it.

In response, the landlord said that the tenant viewed the rental unit when it was empty and that she approved the condition of the same. The landlord said that there were a few minor issues, such as burns in the carpet, but that she reduced the amount of monthly rent accordingly at the tenant’s approval.

The landlord denied that there were major issues and that the rental unit was fit for occupation.

The landlord said that she returned the amount of \$400.00 from the total of \$425.00 for the security deposit and pet damage deposit, deducting \$25.00 for having to change the locks as the tenant never returned the keys to the rental unit.

The landlord contended that she does not owe the tenant reimbursement of the August rent as the tenant had full control of the rental unit and that she could occupy it or not. The landlord agreed that the tenancy ended on the last day of August 2012.

In response, the tenant said that she did not return the keys to the rental unit as she wanted her two deposits returned.

Evidence-

The tenant’s relevant evidence included one page of the tenancy agreement, a copy of the written forwarding address, receipts for payments of the rent and security deposit and pet damage deposit.

The landlord’s additional relevant evidence included a letter to the tenant explaining the deduction of \$25.00 from the landlord, the tenancy agreement, a letter of explanation from the landlord’s perspective and a copy of the refund of \$400.00.

Analysis

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

As to the tenant's claim for reimbursement of the rent for August 2012, I find the tenant and the landlord entered into a valid, enforceable month to month tenancy agreement and that the tenant was responsible for paying rent, beginning July 31, 2012, according to the terms of the agreement, whether she moved in or not.

Section 45 (1) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Therefore I find that the tenant submitted insufficient notice to end the tenancy and is liable to the landlord for rent for the month of August 2012. I therefore dismiss the tenant's claim for a return of the rent for August 2012.

As to the tenant's claim for a return of her security deposit and pet damage deposit, under section 38 of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the security deposit and pet damage 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 and pet damage deposit.

In the case before me, the undisputed evidence shows that the landlord received the tenant's written forwarding address on or about August 20, 2012, I find that the tenancy ended on August 31, 2012, the tenant has not agreed to any deductions from her security deposit or pet damage deposit, and the landlord has not applied for arbitration claiming against the security deposit or pet damage deposit.

The landlord was therefore required to return the full amount of the tenant's security deposit and pet damage deposit by September 15, 2012.

However, in contravention of the Act, the landlord deducted an amount from the tenant's security deposit and pet damage deposit without authority prior to returning the remaining portion on September 10, 2012.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from an arbitrator, or with the written agreement of the tenant. Here the landlord did not have any such authority to keep any portion of the security deposit and pet damage deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or pet damage

deposit, and under section 38 I must order the landlord to pay the tenant double her security deposit and pet damage deposit.

I grant the tenant reimbursement of their filing fee of \$50.00.

I therefore find the tenant has proven a total monetary claim of \$500.00, comprised of her security deposit of \$225.00, doubled to \$450.00, her pet damage deposit of \$200.00, doubled to \$400.00, the filing fee of \$50.00, less the amount previously paid to the tenant, \$400.00.

I grant the tenant a monetary order for \$500.00 and it is enclosed with the tenant's Decision. This order is a legally binding, final order, and 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.

Conclusion

The tenant has proven a total monetary claim of \$500.00 and I have granted her a monetary order in that amount.

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: December 24, 2012.

Residential Tenancy Branch