



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord both attended the conference call hearing; each gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2012 and was to expire on June 1, 2013 although the tenant never moved into the rental unit. A fixed term tenancy agreement was signed by the parties, although neither party has provided a copy of the tenancy agreement except for page 2 of 6 pages. The page that has been provided does not contain any names or signatures, but states that rent in the amount of \$1,250.00 per month is payable on the 1st day of each month. The tenant testified that the page is a portion of the tenancy agreement entered into by the parties. The tenant paid rent for the month of October, 2012.

The tenant further testified that the landlord collected a security deposit from the tenant in the amount of \$625.00 in September, 2012 and none has been returned to the tenant.

The tenant also testified that the landlord had told the tenant that the rental unit was not re-rented until November 15, 2012, and the tenant agreed that the landlord could keep the security deposit for half a month's rent. The tenant then spoke to the new tenants of the rental unit who advised they had been residing there since November 1, 2012. Further, the tenant had agreed that the landlord could leave the hydro in the name of the tenant until November 15, 2012 and was surprised to learn from a BC Hydro bill that the account had been closed effective October 31, 2012. A copy of that bill was provided as evidence that new tenants were in the rental unit by November 1, 2012.

The tenant testified that the only time the tenant provided the landlord with a forwarding address in writing is in the Tenant's Application for Dispute Resolution.

The landlord testified that the tenant told the landlord on October 8, 2012 that the rental unit was not up to the standards of the tenant and spouse, and that they had decided not to move into the rental unit. The tenant notified the landlord in writing of that decision in an email dated October 13, 2012. In order to get it re-rented, the landlord had another tenancy agreement signed by a new tenant and reduced the rent by \$50.00 per month and allowed the new tenants to move in early rent free. Thus, the new tenants moved in November 1, 2012 but didn't start to pay rent until November 15, 2012. The landlord and the new tenants signed 2 tenancy agreements, and copies of both were provided for this hearing. The first is signed and dated October 19, 2012 for a tenancy to begin on November 15, 2012 for the monthly rent of \$1,250.00. The second is signed and dated October 30, 2012 for a tenancy to begin on November 1, 2012 for the monthly rent of \$1,200.00.

The landlord further testified that the tenant had agreed that the landlord could keep the security deposit by way of email, and a string of emails has been provided for this hearing. The string confirms that the tenant advised the landlord on October 13, 2012 of the intention to not move into the rental unit. The landlord then asks the tenant to keep the hydro in the tenant's name until November 1, 2012 since the landlord felt unable to re-rent the rental unit before then, and the tenant agreed. The tenant then asks the landlord about returning cheques for November and December, to which the landlord replies that they would be mailed back to the tenant or torn up, whichever the tenant preferred. That email goes on to say that the rental unit had been re-rented for November 15, 2012 and asks the tenant to leave the hydro in the tenant's name until

that time. The specific string referred to by the landlord is an email dated October 20, 2012 from the tenant to the landlord asking if the security deposit will be returned, and a response dated October 21, 2012 from the landlord stating that if the landlord had re-rented for November 1, 2012 it would have been refunded, but there was not enough time to advertise because the landlord didn't receive the tenant's notice until October 8, 2012. The tenant then replies on the same date, "No problem."

The landlord also testified that the rental unit had been vacant and knowing that the tenant was not going to move in, the landlord feared for it to be left vacant longer than necessary. The landlord also had major serious surgery in October, 2012 and was not in a very healthy condition to advertise or find another tenant. Therefore the landlord permitted the new tenant to move in early without paying rent for the first 2 weeks.

Analysis

The question before me is not whether or not the landlord is entitled to recover any money from the tenant or from the security deposit for unpaid rent or breach of contract because the landlord has not made an application for any such orders. The question before me is whether or not the landlord has complied with the *Act* by returning the security deposit to the tenant within 15 days of the later of the date the tenancy ended or the date the landlord received the tenant's forwarding address in writing, or if the tenant agreed in writing that the landlord could keep the security deposit. It is clear that the landlord has not returned the security deposit and the landlord takes the position that the tenant agreed to that in writing. The tenant takes the position that the agreement was in place so long as the landlord was not able to re-rent the rental unit prior to November 15, 2012.

The application has been made by the tenant, and therefore the onus is on the tenant to establish that the landlord is not entitled to keep the security deposit.

The landlord had a new tenant enter into a tenancy agreement on October 19, 2012 for a tenancy to begin on November 15, 2012 for the sum of \$1,250.00 per month for a fixed period of one year, and then had the same tenant enter into another tenancy agreement on October 30, 2012 for a tenancy to begin on November 1, 2012 for the monthly rent of \$1,200.00 which is \$50.00 per month less. The landlord testified that the rental unit had been vacant for some time and the landlord was recovering from some serious surgery so wanted the new tenant to move in as early as possible. Thus, the new tenancy agreement was prepared, however the landlord testified that no rent was paid and the new tenant was allowed to stay for the first 2 weeks of the tenancy

without paying any rent to provide the landlord with some peace of mind that the rental unit was no longer vacant.

In this case, the tenant entered into a fixed term tenancy and then decided not to move into the rental unit at all. The landlord had to find another tenant and was able to secure one that was able to move into the rental unit on November 1, 2012. However, I find that the tenant has failed to establish that the landlord collected any rent for that 2 week period and therefore the tenant's agreement that the landlord could keep the security deposit is binding.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: February 27, 2013

Residential Tenancy Branch

