



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee.

The landlord attended and gave affirmed testimony. Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "refused by recipient."

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the fixed term tenancy spanned the period from November 10, 2011 to November 10, 2012. Monthly rent of \$700.00 was due and payable in advance on the first day of each month, and a security deposit of \$350.00 was collected. A move-in condition inspection report was not completed.

On November 10, 2012 the landlord undertook to complete a move-out condition inspection with the tenant. During that time the landlord describes the tenant's behaviour as "aggressive." The landlord testified that the tenant demanded the return of his security deposit, and as the landlord felt threatened, he repaid the tenant's security deposit by way of cheque on that same occasion. Following the tenant's departure, the

landlord determined that considerable cleaning was required and that there were certain illegal substances in the unit. These substances were later removed by Police. The landlord put a stop payment on the cheque issued to the tenant. In his application the landlord indicated that the stop payment was initiated, in part, on the strength of a provision in the tenancy agreement, as follows:

The tenant will not partake in any illegal drug activity while in the unit, on the patio, or on the property of [name of the complex deleted]. Failure to abide by this rule will result in an end to the tenancy and forfeiting the damage deposit.

A move-out condition inspection report was not completed.

The landlord testified that he received the tenant's forwarding address in writing on November 26, 2012. On November 27, 2012 the landlord filed his application for dispute resolution. In addition to seeking to retain the tenant's security deposit and recover the filing fee, the landlord has applied for compensation arising from time spent cleaning, the services of a locksmith and loss of rental income for one month.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

In particular, section 24(2) of the Act states:

24(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23(3) *[2 opportunities for inspection]*,

(b) having complied with section 23(3), does not participate on either occasion, or

- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Section 36(2) of the Act states:

36(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 35(2) *[2 opportunities for inspection]*,
- (b) having complied with section 35(2), does not participate on either occasion, or
- (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Further to the landlord's application and the notice of hearing, documentary evidence before me is limited to a copy of the tenant's letter in which he informs the landlord of his forwarding address, and the particulars related to the landlord's registered mailing of the hearing package.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**. Further, section 5 of the Act speaks to how **This Act cannot be avoided**, and provides as follows:

- 5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Based on the dearth of documentary evidence before me, as above, and the landlord's affirmed / undisputed testimony, I find that the landlord did not complete either a move-in or move-out condition inspection report. Consequently, a copy of neither was provided to the tenant or submitted in evidence. In the result, I find that the landlord's right to claim against the tenant's security deposit is extinguished.

Further, in the absence of any documentary evidence in support of cleaning, repairs, the services of a locksmith or advertisements undertaken to find new renters, and in consideration of the statutory provisions set out in sections 38 and 5 of the Act, as above, the remaining aspects of the landlord's claim must be dismissed.

Conclusion

The landlord's application is hereby dismissed in its entirety, and the landlord is ordered to repay the tenant's full security deposit in the amount of \$350.00.

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: March 06, 2013

Residential Tenancy Branch

