



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City of Kelowna
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain all or part of the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The tenant had applied for dispute resolution, requesting return of the deposit paid and her filing fee costs. This application was not referenced at the start of the hearing; service of Notice of the tenant's hearing was not reviewed with the landlord.

At the start of the hearing I did explain that when a landlord applies to retain the deposits Residential Tenancy Branch policy suggests that any remainder of a deposit may be ordered returned to a tenant; which I find is a reasonable stance.

As service of the tenant's application was not raised during the hearing I am unable to consider the filing fee costs the tenant claimed. Therefore, if the landlord's application fails I find that the tenant is entitled to fee waiver on any application in which she pursues return of the deposit paid for her application that was scheduled to be heard with the landlord's application. In the alternative, if the landlord's application fails, the landlord may choose to provide the tenant with the \$50.00 filing fee cost incurred by the tenant, for her application requesting return of the deposit.

The landlord sent the tenant an evidence package, via registered mail, on February 5, 2012. The mail was not claimed by the tenant. The tenant did not wish to delay the hearing; the evidence was referenced and reviewed during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of rent revenue for December, 2012 in the sum of \$1,200.00?

May the landlord retain the deposit paid in partial satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on August 1, 2012, it was a month-to-month term. Rent was \$1,200.00 due on the first day of each month. A move-in condition inspection report was completed on July 27, 012. A deposit in the sum of \$600.00 was paid.

The landlord is the City of Kelowna.

A copy of the tenancy agreement and inspection report was supplied as evidence.

The landlord stated that on November 28, 2012 the tenant called the landlord to request a move-out condition inspection, but this was the first the landlord had heard of the tenant's intention to vacate. The landlord was unable to locate a new occupant effective December 1, 2012 and has claimed a loss of rent revenue for that month.

The tenant said that she did call the landlord on November 28 to request the inspection. The tenant had left her December 1, 2013 rent payment in the landlord's drop box that is available at City Hall. The envelope also contained the tenant's notice that she would be vacating and was left in the drop box on October 31, 2012 at approximately 5:55 p.m.; the tenant was on her way to work.

The landlord said that they did not receive the tenant's notice or her November rent payment. They became aware of the lack of rent payment when the tenant called requesting the move-out inspection. The landlord said that if the payment and notice had been left in the drop box there would have been a record created. As no record of the payment was made, the landlord determined that the tenant had not paid her rent or given notice to end the tenancy.

The tenant said that she had asked the landlord to check their security cameras; so that it could be proven she had dropped the rent and notice off on October 31, 2012. The landlord said that the cameras are only inside the building and would not have captured

the tenant's image at the drop box. The landlord made enquires and found that at least once within the past 10 years an item had gone missing from the drop box at City Hall. The landlord confirmed that the finance department was working on the budget and that there was a slow-down at City Hall, but that it would be highly irregular to have documents go missing.

The tenant supplied a copy of the cheque duplicate that she had written for November rent owed; she issued the next cheque to the landlord when she discovered her November rent had not been received by the landlord. The tenant had not noticed that her November 2012 rent payment failed to process; she has income from several sources and had not been closely monitoring her account.

After speaking with the landlord on November 28 and discovering her notice and rent had not been received, the tenant again called the landlord and requested a meeting. The parties met on December 3, 2012 to complete the inspection report, at which point the tenant provided her forwarding address.

The tenant met with the Mayor, in the hope the matter could be resolved. The parties were unable to reach agreement.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I have weighted the landlord's submission that rent was not paid for November 2012 and notice ending the tenancy was not given against the submission of the tenant, that she did place payment and notice in the City drop-box on October 31, 2012. I find, on the balance of probabilities that the tenant did place payment and notice in the drop box and that the documents were somehow misplaced by the landlord.

I have based this decision on the testimony of the tenant who I find provided submissions that were consistent with payment and notice having been made on October 31, 2012. The tenant called the landlord on November 28, 2012 as she was expecting to have been contacted for a move-out inspection. When this did not occur the tenant took the initiative to contact the landlord; something that she would not have done if notice ending the tenancy had not been given. I would have to accept that the tenant knowingly failed to give notice ending the tenancy and that she then called the landlord, pretending notice had been submitted; I could not come to that conclusion. I also considered the tenant's request that security camera video be checked; not a request that would have been made if the tenant had not made payment and given notice as she said she did.

I considered the landlord's testimony that on at least 1 prior occasion items left in the City drop-box had gone missing. This led me to accept that it was equally possible that the tenant's payment and notice ending the tenancy had also gone missing. The landlord said that the finance department was in a state of slow-down, further leading me to find that the payment and notice could have been misplaced.

Therefore, as the landlord has failed, on the balance of probabilities to prove that the tenant did not make payment and provide notice I find that notice was properly given to end the tenancy effective November 30, 2012. I find that the landlord's application requesting compensation for loss of December 2012 rent revenue is dismissed.

Residential Tenancy Branch policy suggests that when a landlord applies to retain the deposit, any balance should be ordered returned to the tenant; I find this to be a reasonable stance. Therefore, I find that the tenant is entitled to return of the \$600.00 security deposit. The evidence before me was that the tenant's written forwarding address was given on December 3, 2012. The landlord applied against the deposit on December 14, 2012, within the required 15 days. Therefore, the tenant is not entitled to return of double the deposit.

Based on these determinations I grant the tenant a monetary Order in the sum of \$600.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to return of the \$600.00 security deposit.

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: March 18, 2013

Residential Tenancy Branch

