



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.A.B. Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application to retain the security deposit / and to recover the filing fee. The tenant / respondent attended and gave affirmed testimony. However, despite scheduling of the hearing in response to the landlord's application, the landlord did not appear.

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the tenancy began on May 1, 2012. While the agreement documents the existence of a year-long fixed term of tenancy ending May 1, 2013, the tenant testified that she only agreed to a month-to-month tenancy. Further, the tenant testified that the landlord only provided her with a copy of limited portions of the 6 page tenancy agreement, and his claim that an agreement was made for a year-long fixed term tenancy is entirely false.

Monthly rent of \$950.00 was due and payable in advance on the first day of each month, and a security deposit of \$475.00 was collected. There is no move-in condition inspection report in evidence.

By letter dated November 30, 2012, the tenant gave notice to end the tenancy effective December 31, 2012. In that same letter the tenant informed the landlord of her forwarding address for the purposes of repayment of the security deposit.

The tenant testified that the unit was properly cleaned at the end of tenancy. Further, the tenant testified that the parties agreed to a move-out condition inspection taking

place at 3:00 p.m. on December 31, 2012, however, the landlord did not appear. There is no move-out condition inspection report in evidence.

The tenant testified that no portion of her security deposit has been repaid. The landlord filed his application for dispute resolution on January 15, 2013, or 15 days after the end of tenancy.

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

Sections 24 and 35 of the Act provide that the right of a landlord to claim against a security deposit is extinguished, if the landlord does not provide 2 opportunities for the inspection, or having provided 2 opportunities does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy in accordance with the regulations.

Section 38 of the Act addresses **Return of security deposit and pet damage deposit**.

In part, this section provides that within 15 days of the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, despite the appearance of a written tenancy agreement to the contrary, I find on a balance of probabilities that the parties entered into a month-to-month tenancy beginning May 1, 2012, and not a year-long fixed term tenancy.

Following from the absence of a move-in or move-out condition inspection report, I find that the landlord's right to claim against the security deposit is extinguished.

Additionally, I find that even while the landlord did not attend the hearing, and did not repay the security deposit within 15 days after the end of tenancy, the landlord did file an application to retain the security deposit within the statutory 15 day period.

Following from all of the above, I find that the tenant has established entitlement to the return of her full security deposit in the amount of **\$475.00**, and I hereby issue a **monetary order** in favour of the tenant to that effect.

Conclusion

The landlord's application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$475.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

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: April 08, 2013

Residential Tenancy Branch

