



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit and pet damage deposit, doubled, 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 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.

Each party confirmed that they had received the other party's evidence; however the tenants said they did not receive the landlord's evidence until April 12, 2013, when it was hand delivered.

I have reviewed all evidence and testimony before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order comprised of their security deposit and pet damage deposit, doubled, and to recover the filing fee?

Background and Evidence

I heard undisputed testimony that this tenancy began on June 1, 2011, the last day of the tenancy was November 30, 2012, and that the tenants paid a security deposit and pet damage deposit of \$1075.00 each at the beginning of the tenancy.

The landlord said the tenant did not return the keys to the rental unit until December 10, 2013.

The tenant's relevant evidence included the tenancy agreement, a cheque in the amount of \$950.00, which was a partial return of the deposits, dated December 15, 2012, but mailed December 17, and a copy of the condition inspection report.

The landlord's evidence included receipts for work performed, an email to the tenants, a carpet cleaning receipt, and a receipt from a home improvement store.

The tenant's monetary claim is in the amount of \$4300.00, comprised of their security deposit and pet damage deposit of \$1075.00 each, doubled, and for recovery of the filing fee of \$50.00.

The parties agreed and the evidence showed that the landlord was provided the tenants' written forwarding address on November 30, 2012, on the condition inspection report.

The tenants said that they did not agree that the landlord may retain any amount from their two deposits, although the condition inspection report shows that the tenants signed that portion of the document allowing the landlord to retain \$1200.00 from the deposits.

In response to my question, the tenants said that when they signed the condition inspection report after the final inspection, there were no figures or numbers listed in the box entitled "Security Deposit Statement;" however, when they received this document from the landlord, the box was filled out and the appearance was that the tenants signed, allowing the landlord to retain \$1200.00, and be returned \$950.00 from their deposits. The tenants also denied verbally agreeing that any deductions could be made.

In response to my question as to the status of the cheque for \$950.00, the tenants said that it had been deposited in their account.

Landlord's response-

The landlord said that the parties discussed some work that was to be done, and that the tenants wanted to be able to complete more work before handing over the keys.

The landlord said that when she attended the rental unit later, without the tenants present, she discovered that more damage was done.

The landlord confirmed that she did make the alterations to the condition inspection report after the inspection and the tenants signing the document; however the landlord submitted that she did not know the final amount that would be charged for damages at the time of the inspection. Although questioned about altering a document after a party had signed it, the landlord submitted that she did not know of another way to handle damages at the end of an inspection when the final amount was not known.

I have no evidence that the landlord has made an application for dispute resolution claiming against the tenants' security deposit and pet damage deposit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

Under section 38 of the Residential Tenancy 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, less any deductions agreed to by the tenants, unless the tenant's rights to receive the deposits have not been extinguished. I do not find that to be the case here.

If a landlord fails to comply with this section, then the landlord must pay the tenant double the security deposit and pet damage deposit.

In the case before me, the undisputed evidence show that the landlord received the tenants' written forwarding address and the last day of the tenancy was November 30, 2012. The landlord therefore had until December 15, 2013, to repay the security deposit and pet damage deposit in full, or file an application for dispute resolution claiming against the deposits.

I find the tenants proved that they did not authorize the landlord to make any deductions from their security deposit and pet damage deposit and the landlord possessed no such right to alter a document indicating consent to deductions without the tenants' knowledge or permission.

I inform the landlord that I do not find any situation where it is an acceptable practice to alter a document after that party has signed the document, unaware that changes will be made to suit the purposes of the one making the alterations.

If the landlord has any question as to the legality of altering documents after the other party has signed that document, the landlord is advised to seek the counsel of a lawyer.

In contravention of the Act, the landlord deducted an amount from the tenants' security deposit and pet damage deposit without authority prior to returning the remaining portion of \$950.00.

As I find the landlord has failed to comply with section 38 of the Act, I find the tenants are entitled to a return of their security deposit and pet damage deposit, doubled, less the amount previously paid by the landlord.

I also allow the tenants to recover the filing fee of \$50.00.

I therefore find the tenants are entitled to a monetary award of \$3400.00, comprised of their security deposit of \$1075.00, doubled to \$2150.00, their pet damage deposit of \$1075.00, doubled to \$2150.00, the filing fee of \$50.00, less the amount of \$950.00 returned to the tenants.

Conclusion

The tenants' application is granted and they are entitled to a monetary award of \$3400.00.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act in the amount of \$3400.00, which I have enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. Costs of such enforcement may be recoverable from the landlord.

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: April 18, 2013

Residential Tenancy Branch