



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD; FF

Introduction

This is the Tenant's application for a monetary order for return of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents and copies of her documentary evidence by registered mail sent on January 24, 2013. The Landlord acknowledged receiving the documents on January 31, 2013.

Issues to be Decided

- Did the Tenant extinguish her right to return of the security deposit?

Background and Evidence

This tenancy started on August 1, 2003 and ended on August 31, 2012. The Landlord is holding the Tenant's \$700.00 security deposit which was paid on July 18, 2003.

The Tenant gave the following testimony:

On July 18, 2012, the Tenant provided the Landlord with written notification that she was ending the tenancy on August 31, 2012.

The Tenant testified that the parties agreed to meet to do the move-out condition inspection on August 30, 2012. She stated that on August 30, 2012, the Landlord told the Tenant that he would do the inspection himself so the Tenant waited in the garden. The Tenant testified that the Landlord told her that he would be keeping \$500.00 for cleaning the rental unit and \$200.00 for pet damage. The Tenant stated that the Landlord did not indicate that the Tenant had to sign anything. The Tenant testified that

the Landlord did not provide the Tenant with a copy of the Condition Inspection Report until the Tenant received the Landlord's documentary evidence.

The Tenant testified that she sent the Landlord written notification of her forwarding address on September 17, 2012, by registered mail, but it was returned to her "unclaimed". The Tenant provided a copy of the returned registered mail in evidence.

The Tenant testified that she did not agree that the Landlord could retain any of the security deposit.

The Landlord gave the following testimony:

The Landlord stated that the Tenant did not clean the rental unit at the end of the tenancy and damaged the walls and kitchen cabinets. The Landlord provided photographs and a copy of the condition inspection report that he prepared himself.

The Landlord stated that the Tenant said she didn't want to take part in the inspection and chose to stay outside. The Landlord stated that he had a clipboard and made some notes about the inspection, but did not prepare a report until after the Tenant had left the rental property.

The Landlord stated that he thought that the Tenant had agreed that he could keep \$500.00 from the security deposit.

The Landlord has not filed an application for dispute resolution with respect to the security deposit or damages to the rental unit.

The Tenant gave the following reply:

The Tenant stated that it didn't make sense that she would have shown up at the rental property for the condition inspection and then refused to take part. She stated that the Landlord's photographs were taken in winter and that the Tenant moved out in the summertime.

Analysis

The Landlord provided documentary evidence and testimony suggesting that he believes he is entitled to a monetary award for damages to the rental unit. However, this is the Tenant's application and therefore this Decision has been based on the relevant evidence with respect to the Tenant's application only.

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

I accept that the Tenant served the Landlord with written notification of her forwarding address by registered mail sent September 17, 2012. The Act provides that service in this manner is deemed effective 5 days after mailing the documents. In this case, the Landlord did not claim the registered mail; however, it is very clear that the Landlord received the Tenant's address for service when he was served with the Notice of Hearing documents on January 31, 2013. The Landlord did not return the security deposit within 15 days of receipt of the Tenant's address, nor did the Landlord file for dispute resolution against the security deposit.

Section 36(1) of the Act provides that if a tenant fails to participate in an end of tenancy inspection, the tenant extinguishes the right to return of the security deposit. Similarly, Section 36(2) of the Act provides that a landlord who fails to meet end of tenancy condition report requirements also extinguishes the right to claim against the security deposit for damages. In this case, I find that the Tenant attended at the rental property for the condition inspection, but the Landlord did not comply with the requirements with respect to completing the Condition Inspection Report. On the day of the inspection, I find that the Landlord did not complete a report that complies with the requirements of Sections 18 or 20 of the regulation. I find that it is the Landlord who has extinguished his right to claim against the security deposit for damages, and not the Tenant who has extinguished her right for return of the deposit.

I explained to the parties that the Landlord still retains the right to file an application for damages under the provisions of Section 67 of the Act.

I explained to the parties that Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. However, in this case the Tenant specifically waived her right to double the amount of the security deposit. Therefore, I find that the Tenant has established her claim for return of the **\$700.00** security deposit, plus interest. Interest on the security deposit has accrued in the amount of **\$24.80**.

The Tenant has been successful in her application and I find that she is entitled to recover the cost of the **\$50.00** filing fee from the Landlord.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$774.80** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 29, 2013

Residential Tenancy Branch