



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the respondent by mailing, by registered mail to where the respondent resides on April 10, 2013.

The parties failed to provide all of the evidence that they were relying on prior to the start of the hearing. The parties agreed they would provide the Burnaby Residential Tenancy Branch with additional evidence by May 30, 2013. I received a statement and additional evidence from the applicant but did not receive any evidence or submissions from the respondent.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the applicant is entitled to the return of the security deposit/pet deposit?
- b. Whether the applicant is entitled to recover the cost of the filing fee?

Background and Evidence:

The applicant sublet a room from the respondent who in turn rented the rental unit from an owner. The tenancy began on February 1, 2010. The rent was \$500 or \$600 per month payable on first day of each month depending of which room the applicant resided in. The applicant testified he paid a security deposit of \$350 to the respondent at the start of the tenancy and the respondent used it as part of her security deposit with the owner. The respondent denies the applicant paid a security deposit.

The parties testified they had a "special relationship." However, the applicant and respondent had a falling out. On December 19, 2011 the applicant came home to find a person "repacking" his belongings. The respondent initially stated she was doing this as a favor for the applicant. However, later she demanded that the respondent pay \$90 for this work.

The applicant testified he gave oral notice on December 27, 2011 of his intention to vacate the rental unit. Written notice was prepared on December 30, 2011 but was not given to the landlord until January 11, 2012. The tenancy ended on January 31, 2012. The applicant moved to the back suite and paid rent directly to the owner of the rental property.

The applicant provided the respondent with his/her their forwarding address in writing on March 1, 2012.

The applicant testified on many occasions he has asked for the return of the security deposit. The respondent refused saying initially that the tenant must pay the \$90 for the "repacking" of his belongings. The applicant provided evidence that he filed a claim around the latter half of March 2012 but the respondent told him that things were tight financially for her and that she would pay him the damage deposit she owed when she moved out. The applicant decided not to pursue his claim at that time.

The respondent moved out of the rental property on July 5, 2012. There was an extremely unpleasant confrontation between the owner and the respondent. The

respondent demanded that the owner pay the security deposit to her. The applicant was present video recorded the confrontation. The respondent was initially unaware the encounter was being video taped but later recognized that it was and commented on it. The conversation between the respondent and the owner and the respondent and the applicant was unpleasant and heated. On many occasions throughout that conversation the applicant demanded that the respondent pay him his share of the security deposit. The respondent refused by saying that her relationship with the tenant applicant was totally different than her relationship with the owner and that the applicant should take her to Residential Tenancy if he wanted to claim the security deposit. The respondent told the applicant that he owed her money (for the "repacking") but did not deny the applicant had paid the security deposit throughout the encounter. The owner eventually reimbursed the security deposit in the sum of \$700 in cash to the respondent.

The applicant testified that he gave the respondent a security deposit of \$350 at the start of the tenancy. The respondent was reluctant to provide a receipt. The respondent subsequently gave the applicant a receipt which is dated October 1, 2010. That receipt indicates it was for Rent + Deposit; \$500 + \$350. The respondent disputed this evidence and testified the applicant added the words "Deposit" and "350." The applicant admitted he added those words to that receipt. However, he testified that the respondent provided him with another typewritten receipt signed by the respondent dated February 1, 2010 for \$500 for monthly rent and the landlord added the words 350 deposit. Tenant's Witness #2 testified that the signature and the writing on that receipt is that on the respondents.

The applicant testified that he has asked for the return of the deposit but the respondent has refused on the saying that she was still living in the rental unit and could not pay the deposit as it was being held by the owner of the rental property.

The landlord denies that the tenant paid the security deposit. She testified that the evidence of the tenant's witness is biased because she has been involved in a Supreme Court dispute with that person.

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit unless the Tenant specifically waives this claim. The tenant testified he was not claiming for double the deposit. The applicant has the burden of proof to establish the claim on a balance of probabilities.

Analysis

In Faryna v. Chorny, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

After carefully considering all of the evidence I determined that the evidence of the applicant that he paid the security deposit in the sum of \$350 to the respondent is to be preferred to that of the respondent for the following reasons:

- The payment of a security deposit is a normal payment made by parties during the course of a tenancy relationship.
- The respondent failed to present banking records, a receipt book or other documents that would show monies paid by the applicant to the respondent..

- The applicant's testimony was candid and at times contrary to his interest. For example he acknowledged that written notice was not given to the respondent landlord until January 11, 2012.
- I accepted the evidence of the applicant that he has consistently asked for the return of the security deposit.
- The applicant admitted that he added the words security deposit to the first receipt but confirmed he paid \$350 as a security deposit.
- Witness #1 for the applicant confirmed that the second receipt was signed by the landlord and the words security deposit was in the landlord's handwriting.
- The video tape evidence in July 2012 when the respondent vacated the rental unit shows a very unpleasant confrontation between the owner and the respondent and the applicant and the respondent. The applicant on many occasions demanded the return of his share of the deposit. The respondent did not dispute that the applicant paid the deposit but rather demanded that he pay the money he owes her and that he should take him to a residential tenancy hearing.

After considering the totality of the evidence and in the face of conflicting evidence I determined the applicant has established on a balance of probabilities that he paid the respondent a security deposit of \$350 at the start of the tenancy. I determined the tenancy ended on January 31, 2012. I further determined the applicant provided the landlord with their forwarding address in writing on March 1, 2012. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The applicant stated he does not seek a doubling of the security deposit.

Monetary Order and Cost of Filing fee

I ordered the respondent to pay to the applicant the sum of \$350 plus the sum of \$50 in respect of the filing fee for a total of \$400. I dismissed the applicant's claim of \$100 for the cost to launch this claim. The applicant is entitled to the \$50 filing fee in this application but is not entitled to the filing fee in the previous Application for Dispute Resolution as that claim should have been dealt with in that application.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: June 5, 2013

Residential Tenancy Branch