



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MND, MNDC, FF
For the tenant: MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The landlord applied for a monetary order for money owed or compensation for damage or loss and for alleged damage to the rental unit, and for recovery of the filing fee.

The tenant applied for a return of her security deposit, doubled, a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord, the tenant, her mother, and the tenant's advocate appeared at the telephone conference call hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

At the outset of the hearing, the parties acknowledged receipt of the other's documentary evidence.

Thereafter the parties were provided the opportunity to present their evidence orally, refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence 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.

Preliminary issue-The tenant's advocate requested that the tenant's mother be removed as a named tenant, as was in the landlord's application for dispute resolution, as the mother was never a tenant. I note that in the tenant's application for dispute resolution, the tenant's mother listed herself as a tenant.

In reviewing the documentary evidence and during the course of the hearing, it became apparent that the tenant's mother was acting in the capacity of her agent.

I therefore have amended both the landlord's application for dispute resolution and the tenant's application for dispute resolution to remove the tenant's mother as a named tenant.

Issue(s) to be Decided

1. Is the landlord entitled to monetary compensation and to recover the filing fee?
2. Is the tenant entitled to a monetary order for the return of her security deposit, doubled, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties is that this tenancy began on December 12, 2012, the tenant's last night in the rental unit was January 29, 2013, the tenant removed her personal property the first week in February 2013, monthly rent was \$475, and the tenant paid a security deposit of \$230 at the beginning of the tenancy. The parties agreed that the landlord has not returned any portion of the tenant's security deposit.

The parties agreed that there is a move-in condition inspection report; however the tenant disputes that she received a copy of the report. There was not a move-out condition inspection report.

The rental unit was a single room occupancy, with another single bedroom available for rent and shared common area between the two tenants.

Landlord's application-

The landlord's listed monetary claim is \$225, without providing a specific breakdown of costs.

The landlord's relevant documentary evidence included witness letters, a move-in condition inspection report, and a written timeline of events.

In response to my question as the landlord provided no details of her monetary claim, the landlord stated that this sum was intended to account for her time in cleaning the rental unit after the tenant vacated. When pressed for details, the landlord was non-specific, but did state she was required to pay people to help clean, further explaining that if she had to pay someone else, the costs would be much greater.

The landlord stated she took photographs and a video of the state of the rental unit at the end of the tenancy, but did not submit any into evidence.

In response to the landlord's application, the tenant's advocate stated that there was no definite proof that the landlord suffered a loss, and contended that the landlord extinguished her rights to the security deposit as the landlord failed to provide the tenant with any opportunities to inspect the premises at the end of the tenancy.

Tenant's application-

The tenant's monetary claim is in the amount of \$460, which is her security deposit of \$230, doubled.

In support of her application, the tenant submitted that the landlord was provided her forwarding address via text message on February 4, 2013, and a written forwarding address in a letter on February 12, 2013, and further, that the landlord has failed to return any portion of her security deposit, despite a request to do so. The tenant submitted that she has not authorized the landlord to make any deductions.

In response, the landlord confirmed that she received the tenant's forwarding address both with the text message and via the letter dated February 12, 2013.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, upon a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took all reasonable measures to mitigate their loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

Landlord's application-

I find the landlord submitted insufficient evidence to prove she sustained a financial loss or verification of any alleged loss, such as with receipts, invoices, or other substantiation of payments made. I therefore find the landlord has failed to meet the first and third steps in her burden of proof as noted above.

Additionally, under section 37 of the Act, the tenant was required to leave the rental unit reasonably clean, and I find the landlord submitted insufficient evidence that the tenant left the rental unit in a state which required cleaning, as there was no move-out condition inspection report or photographs of the rental unit at the end of the tenancy.

Due to the above, I therefore dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's application, I therefore dismiss her request for recovery of the filing fee.

Tenant's application-

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit.

In the case before me, the undisputed evidence shows that tenancy ended in the first week of February 2013, and that the landlord received the tenant's written forwarding address with a letter sent February 12, 2013.

Although the landlord did not remember the exact date she received this letter, she did acknowledge receiving it. Section 90 of the Act states that documents served by mail are deemed delivered five days later. Thus the landlord was deemed to have received the letter on February 17, 2013, and I have no evidence to the contrary. I note that February 17 fell on a Sunday and I have taken this into consideration in calculating the 15 days.

Therefore the landlord was required to return the tenant's security deposit or file an application for dispute resolution claiming against the security deposit by March 5, 2013.

Although the landlord did file an application for dispute resolution, she did not claim against the security deposit, and at any rate, her application was not filed until April 1, 2013.

I also considered whether the tenant had extinguished her right to a return of the security deposit pursuant to section 36(1) of the Act and I have concluded that she did not as the landlord failed to submit any evidence that she offered the tenant two opportunities to inspect the rental unit at the end of the tenancy.

Therefore, I find that the landlord is not entitled to retain any portion of the tenant's security deposit, and under section 38(6) I must order the landlord to pay the tenant double her security deposit of \$230.

I also find merit with the tenant's application for dispute resolution and I grant her recovery of her filing fee of \$50.

I therefore find the tenant is entitled to a monetary award in the amount of \$510, comprised of her security deposit of \$230, doubled to \$460, and the filing fee of \$50.

I have not considered whether the landlord has extinguished her right to claim against the security deposit as her application did not make such a claim.

Conclusion

The landlord's application is dismissed.

The tenant is entitled to a monetary award in the amount of \$510.

I grant the tenant a final, legally binding monetary order in the amount of \$510, which I have enclosed with the tenant's Decision.

Should the landlord fail to pay the tenant this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The landlord is advised that costs of such enforcement are subject to recovery 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*.

Dated: June 27, 2013

Residential Tenancy Branch