



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied to keep all or part of the security deposit.

At the hearing on August 22, 2013 the Landlord stated that she believes copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenants, via registered mail, at the service address noted on the Application for Dispute Resolution. She stated that she is unable to locate the receipt for that Canada Post mail so she is unable to provide a tracking number and she is unable to declare the precise date of service.

The Landlord stated that she believes her husband has the Canada Post receipt but he was called out of town yesterday for a family emergency and is unable to participate in these proceedings. The Landlord requested an adjournment for the purposes of proving service of the Application for Dispute Resolution and Notice of Hearing.

As the male Landlord was not able to participate in the hearing on August 22, 2012 for reasons that could not be anticipated and are beyond his control, and he appears to have evidence of service of the Application for Dispute Resolution and Notice of Hearing, the request for an adjournment was granted.

The hearing was reconvened on October 16, 2013. Both Tenants were in attendance at this hearing but the Landlord was not represented. The male Tenant stated that the Tenant had been served with notice of the hearing for August 22, 2013 but they were unable to attend that hearing due to work commitments.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the carpet and to retain all or part of the security deposit?

Background and Evidence

The male Tenant stated that this tenancy began on May 01, 2012; that the Tenant paid a security and pet damage deposit of \$1,795.00; that the Landlord did not complete a condition inspection report at the start of the tenancy; that the Landlord did not schedule a time to inspect the rental unit at the start of the tenancy; that the Landlord and the Tenant did not jointly inspect the rental unit at the start of the tenancy; that the tenancy ended on May 01, 2013; that the Tenant did not authorize the Landlord to retain the security deposit or pet damage deposit; that the Landlord did not return any portion of the security deposit or pet damage deposit; that the Tenant mailed a forwarding address to the Landlord sometime during the first week of May of 2013; that the service address for the Tenant which the Landlord recorded on the Application for Dispute Resolution is the forwarding address provided by the Tenant; that the Tenant did not damage the carpet in the rental unit; and that the Tenant would like the security deposit refunded.

Analysis

On the basis of the testimony of the male Tenant and in the absence of evidence to show that the Tenant did damage the carpet, I find that I have insufficient evidence to conclude that the Tenant damaged the carpet. I therefore dismiss the Landlord's claim for compensation for repairing the carpet.

As the Landlord has not established that the Tenant owes money to the Landlord, I dismiss the Landlord's application to retain the security deposit. Section 23 of the *Residential Tenancy Act (Act)* stipulates that a landlord must give the tenant two opportunities to jointly inspect the rental unit at the start of the tenancy and that the Landlord and the Tenant must jointly inspect the rental unit at the start of the tenancy. On the basis of the testimony of the male Tenant and in the absence of evidence to the contrary I find that the Landlord failed to comply with section 23(3) of the *Act*, as the Landlord did not schedule a time to inspect the unit at the start of the tenancy.

Section 24(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 23(3) of the *Act*. As I have concluded that the Landlord failed to comply with section 23(3) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after 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 and/or pet damage deposit or make an application for dispute resolution claiming against the deposits. In

circumstances such as these, where the Landlord's right to claim against the security deposit for damage has been extinguished, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit for damage and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. As the Landlord has not yet returned the security deposit and pet damage deposit, I find that the Landlord did not comply with section 38(1) of the *Act*.

Section 38(6) of the *Act* stipulates 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, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

Conclusion

The Tenant has established a monetary claim of \$3,590.00, which is comprised of double the security deposit and pet damage deposit and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be filed with the Province of British Columbia 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: October 16, 2013

Residential Tenancy Branch

