



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coast Realty Group (Comox Realty) Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for damage to the rental unit, for authority to retain the tenant's security deposit 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.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter both 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.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution 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

Is the landlord entitled to retain the tenant's security deposit and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on June 1, 2012, monthly rent was \$1200 and the tenant paid a security deposit of \$600 at the beginning of the tenancy, which has not been returned to the tenant.

The landlord stated that the tenancy ended on June 3, 2013, when the tenant vacated the rental unit and the tenant stated that this tenancy ended on June 1, 2013, when she vacated the rental unit.

I note that the parties were in a dispute resolution hearing on June 6, 2013, on the parties' application for dispute resolution, where another Arbitrator made a finding that the tenant vacated the rental unit on June 1, 2013; as such I am not at liberty to change the results of an issue previously decided upon in dispute resolution due to the legal principle of *res judicata*, and I affirm the tenancy ended on June 1, 2013, when the tenant vacated the rental unit.

In response to my question, the landlord stated that he received the tenant's written forwarding address on June 6, 2013 and that there were no move-in or move-out condition inspection reports. There was also no written tenancy agreement.

I must note that the landlord has taken over management of this property for the owner, as of April 17, 2013, and was not involved with this tenancy at the beginning.

In the landlord's application, he has claimed monetary compensation in the amount of \$600, without providing a detailed calculation as required by section 59(2)(b) of the Act. This led me to question the landlord as to the particulars of his claim, to which he responded that the owner of the home "is going to have to repaint" the home, which would be more than \$600, remove some of the tenant's personal property, and perform yard work, which had been the tenant's responsibility.

Although the home is listed for sale, it has not been sold, as the owner has taken the entire summer to clean and remediate the yard, according to the landlord.

The landlord's relevant documentary evidence included undated photographs of the rental unit, the Decision from the parties' previous dispute resolution hearing, and a note from the tenant to the landlord.

In response, the tenant submitted that the painting in question was of one small wall, for which the tenant had permission to paint and for which she offered the owner to repaint, with no response.

The tenant further submitted she was required to clean the rental unit for at least 2 weeks at the beginning of the tenancy as it was such a "mess." The tenant stated that

the carpet was in poor condition, with stains, and that she had begged the owner to have an inspection of the premises at the beginning of the tenancy.

The tenant stated that she had an agreement with the landlord that she was to mow the lawn, but that was her only responsibility in regards to the lawn.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

A key component in establishing a claim for damage is the record of the rental unit at the start and end of the tenancy as contained in condition inspection reports. Sections 23, 24, 35, and 36 of the Residential Tenancy Act deal with the landlord and tenant obligations in conducting and completing the condition inspections. In the circumstances before me the landlord has failed to meet their obligation under of the Act of completing the inspections resulting in extinguishment of the landlord's right to make a claim against the tenant's security deposit for damage to the rental unit. There is also no independent record of the condition of the rental unit at the start and end of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to and after the tenancy, I do not accept the landlord's claim for damage to the rental unit. The landlord has the burden of proof on the balance of probabilities and I find the landlord's evidence, or rather lack of compelling evidence, does not meet the burden of proof.

I also find that the landlord failed to convince me that the owner of the property has taken the entire summer to perform yard work or, due to a lack of a written tenancy agreement, that the tenant was responsible for landscaping services.

I also find the landlord submitted no proof that they have incurred a loss, such as would be proven through receipts, invoices, or cancelled cheques.

I therefore find the landlord has submitted insufficient evidence to prove their claim for \$600 and I dismiss their application, without leave to reapply.

I next considered the matter of the tenant's security deposit of \$600.

Under section 24 (2) and 36 (2) of the Act, a landlord is required to conduct a move-in inspection and complete a condition inspection report in accordance with the Act and Regulations. In the event the landlord fails to comply with these sections, the landlord's right to make a claim against the tenant's security deposit for damage to the rental unit is extinguished. I find that to be the case here.

Therefore, pursuant to section 38 of the Act, as the landlord's right to make a claim against the tenant's security deposit as they have done here has been extinguished, the landlord was required to return the security deposit in full within 15 days of the end of the tenancy or receiving the tenant's written forwarding address.

Section 38(6) states that if the landlord fails to comply to return the security deposit as required, the landlord must pay the tenant double her security deposit.

In the case before me, as the tenancy ended on June 1, 2013, and the landlord acknowledged receiving the tenant's written forwarding address on June 6, 2013, the landlord had 15 days from June 6, 2013, to return the security deposit and failed to do so.

I therefore find that the landlord must pay the tenant double her security deposit of \$600, or a total of \$1200.

Pursuant to section 67 of the Act, I award the tenant a monetary order in the amount of \$1200, which I have enclosed with the tenant's Decision.

Conclusion

The landlord's application to permanently retain the tenant's security deposit and for recovery of the filing fee is dismissed.

The tenant is granted a monetary order for the amount of \$1200.

Should the landlord fail to pay the tenant 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. The landlord is advised that costs of such enforcement are 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: September 27, 2013

Residential Tenancy Branch

