



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This was a cross-application hearing.

The tenant applied requesting return of the security deposit, compensation for damage or loss under the Act and to recover the filing fee costs.

The landlord applied requesting compensation for damage or loss under the Act and compensation for damage to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

The landlord confirmed that the claim was in relation to damage to the rental unit only; there was not a claim for damage or loss under the Act.

Initially the tenant said he had not received the 29 page evidence package sent to the tenant via registered mail on October 1, 2013. The tenant then confirmed that he had received the package several days ago and that he was ready to proceed with the hearing.

The landlord supplied a detailed calculation of the claim as part of the evidence supplied via registered mail sent on October 1, 2013. The tenant conformed that he understood the claim.

Issue(s) to be Decided

Is the tenant entitled to return of double the security deposit paid?

Is the landlord entitled to compensation for damage to the rental unit?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2012; the 1 year fixed-term agreement signed by the parties indicated that the tenant must vacate on January 31, 2013. The tenancy continued until June 5, 2013; when the tenant vacated. The landlord said that the tenant gave 2 months written notice, ending the tenancy. A copy of the tenancy agreement was supplied as evidence.

Rent was \$4,000.00 per month, due on the 1st day of each month. A security deposit in the sum of \$2,500.00 was paid.

The landlord confirmed that a move-in and move-out inspection report was not completed.

The parties agreed that they communicated in writing, via email. Copies of emails were supplied as evidence.

The landlord agreed that the tenant supplied his written forwarding address, sent via email on June 24, 2013. The landlord returned \$1,000.00 to the tenant; the tenant had originally agreed to a deduction in the sum of \$485.00; the landlord rejected that offer and made the \$1,500.00 deduction from the deposit. The tenant said he no longer agrees to any deduction from the deposit, as the offer had been rejected by the landlord.

The landlord made a claim in the sum of \$1,500.00 for plumbing costs incurred in September 2012, engineer costs, a damaged chair, cleaning, carpet cleaning, cabinet repair, a broken bed headboard, a head board repair and extra cable channels.

Security deposit - Finding

In relation to the security deposit that was paid by the tenant, I have considered the Act and the impact the absence of condition inspection reports had on the deposit.

Section 23 of the Act requires a landlord to schedule and complete a move-in condition inspection with the tenant. A copy of the report must be signed and a copy given to the tenant. This did not occur.

Section 24 of the Act sets out consequences that result when the landlord fails to meet the requirement to schedule and complete the move-in condition inspection report. If a landlord fails to schedule and complete a report at the start of the tenancy the landlord's right to claim against the security deposit for damage to the unit is extinguished. The landlord's claim was in relation to damage only.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit.

Further, section 38 provides, in part:

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(Emphasis added)

In this case the landlord did not have the tenant's written permission to retain the deposit and did not have an Order allowing the landlord to retain the deposit; in accordance with section 38(4) of the Act.

Therefore, I find that on June 24, 2013, the landlord was given the tenant's written forwarding address via email, a common method of written communication used by the parties. A copy of this email was supplied as evidence.

As the landlord failed to complete a move-in condition inspection report I find, pursuant to section 24 of the Act, that the landlord's right to claim against the security deposit for damage to the unit was extinguished.

Therefore, once the landlord received the tenant's written forwarding address, the landlord was required to return the deposit within 15 days of June 24, 2013. Even though the landlord had a claim against the tenant, the right to hold the deposit against a claim for damage to the unit had been extinguished. When the landlord failed to return the deposit in within 15 days, section 38(6) of the Act determines that the deposit must be doubled.

Therefore, I find that the landlord is holding a deposit in the sum of \$5,000.00; less \$1,000.00 that has been previously returned to the tenant; for a balance of \$4,000.00.

Mutually Settled Agreement – Damage Claim

During the hearing the tenant said that he would agree to payment of a further \$2,500.00 by the landlord and allow the landlord to retain \$1,500.00 from the doubled security deposit. This would result in the tenant receiving a total of \$3,500.00.

A full explanation of the steps that parties must take in relation to a security deposit was provided. The landlord was told that the failure to complete the inspection reports required the landlord to return the security deposit within fifteen days of June 24, 2013. The landlord did not initially wish to accept the tenant's offer and proceeded with submissions in relation to each item of damage claimed.

As I have found that the security deposit must be doubled and, as the tenant has agreed to provide the landlord with compensation as claimed, in the sum of \$1,500.00, I find that the claim by the landlord is fully satisfied by the agreement of the tenant.

Therefore, I find that the tenant is entitled to compensation in the sum of \$5,000.00; less \$1,000.00 previously returned; less \$1,500.00 in satisfaction of the landlord's claim. The tenant is entitled to a balance in the sum of \$2,500.00.

As the tenant's application has merit I find that the tenant is entitled to filing fee costs. The landlord did not request filing fee costs.

Based on these determinations I grant the tenant a monetary Order in the sum of \$2,550.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I note that the landlord retained a security deposit in the sum of \$2,500.00; \$500.00 more than allowed by section 19 of the Act.

Conclusion

The tenant is entitled to return of double the \$2,500.00 security deposit; less the sum claimed by the landlord and agreed to by the tenant, \$1,500.00; less \$1,000.00 previously returned to the tenant.

The tenant is entitled to filing fee costs.

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

