



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested return of double the security deposit and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

The landlord applied requesting compensation for damage to the rental unit, to retain the security deposit in satisfaction of the claim and to recover the filing fee cost.

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.

Issue(s) to be Decided

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

Is the landlord entitled to compensation in the sum of \$98.00 for damage to the rental unit?

May the landlord retain the security deposit in satisfaction of the claim?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agreed that a tenancy agreement was signed; a copy was not supplied as evidence. The tenancy commenced on March 15, 2013, rent was \$800.00 per month, due on the 1st day of each month. A security deposit in the sum of \$400.00 was paid.

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

The landlord said that in mid-April 2013 the tenant gave written notice ending the month-to-month tenancy effective May 31, 2013. On June 17, 2013 the landlord received the tenant's written forwarding address.

The landlord returned \$302.00 of the security deposit to the tenant and, without the tenant's written agreement, kept the balance of the security deposit. The tenant confirmed that she has cashed the cheque mailed to her. The parties confirmed that the tenant had not signed at the end of the tenancy, agreeing to deductions from the deposit.

The landlord claimed compensation in the sum of \$98.00 for carpet cleaning; verification of the cost as not supplied as evidence. The landlord said the new occupant completed the cleaning.

The tenant said she lived at the unit for a very short period of time and did not leave the carpets dirty.

Analysis

The Act and Regulation include specific requirements in relation to deposits held in trust by a landlord. Section 23 of the Act provides:

Condition inspection: start of tenancy or new pet

- 23** (1) *The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.*
- (2) *The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if*
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and*
 - (b) a previous inspection was not completed under subsection (1).*
- (3) *The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.*

(4) The landlord must complete a condition inspection report in accordance with the regulations.

(5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6) The landlord must make the inspection and complete and sign the report without the tenant if

(a) the landlord has complied with subsection (3), and

(b) the tenant does not participate on either occasion.

When the landlord failed to schedule a move-in condition inspection report section 24 of the Act determines that the right of the landlord to claim against the security deposit for damage is extinguished:

Consequences for tenant and landlord if report requirements not met

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(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As the landlord's right to claim against the security deposit for damage to the unit was extinguished, in the absence of written agreement for deductions, given by the tenant at the end of the tenancy, the landlord was required to return the deposit within fifteen days of June 17, 2013. When the landlord returned only \$302.00 he breached the requirement of the Act.

Section 38(1); 38(5) and 38(6) of the Act provide:

Return of security deposit and pet damage deposit

38 *(1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...

(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.

Therefore, as provided by section 38(6) of the Act, I find that the tenant is entitled to return of double the \$400.00 deposit; less the \$302.00 previously returned.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In the absence of condition inspection reports, setting out the state of the rental unit at the start and end of the tenancy and, in the absence of any verification of the claim made, I find that the landlord's claim for carpeting cleaning is dismissed.

I find that the tenant's application has merit and that the tenant is entitled to recover the \$50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

I find that the tenant has established a monetary claim, in the amount of \$850.00; less \$302.00 previously returned to the tenant. This sum is comprised of double the \$400.00 security deposit and \$50.00 in compensation for the filing fee paid by the tenant for this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order for \$548.00. 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.

Conclusion

The tenant is entitled to return of double the \$400.00 security deposit; less \$302.00.

The tenant is entitled to filing fee costs.

The landlord's claim is dismissed.

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 01, 2013

Residential Tenancy Branch

