



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Commercial Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has made application for a monetary Order for return of the security deposit.

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, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord confirmed receipt of a copy of a tenancy agreement supplied by the tenant. That agreement related to a current tenancy, not the tenancy that is in dispute. The tenant could not locate a copy of the tenancy agreement that related to the tenancy in dispute, although the parties went on to agree to the terms.

The landlord confirmed receipt of the tenant's notice of hearing that was personally delivered by the tenant to the landlord's office on either September 9th or 10th, 2013.

The tenant said she did not receive the 4 page evidence submission sent to her via regular mail; that evidence was received by the Residential Tenancy Branch on November 27, 2013. As the tenant had not received the evidence that landlord was at liberty to provide that evidence through oral testimony.

Issue(s) to be Decided

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

Background and Evidence

The tenant entered into a tenancy agreement which ended effective September 30, 2012. A security deposit in the sum of \$650.00 was paid.

The parties did not agree on the steps that had been taken in relation to condition inspection reports. The tenant supplied a copy of an inspection report which she had not signed; it showed the move-in inspection report was completed on April 1, 2012 and the move-out on September 30, 2012. The tenant said she received a copy of the report after the tenancy had ended.

The inspection report indicated that a forwarding address had been provided. There was no dispute that the landlord filled in that portion of the report, as the tenant had moved to another property managed by the landlord. The tenant confirmed that she did not supply the landlord with a written forwarding address, as the landlord was aware of her new address.

The parties agreed that the security deposit for the unit in dispute was not transferred to the next tenancy and that the tenant paid \$200.00 as a security deposit for the new tenancy.

On September 5, 2013 the tenant applied for dispute resolution.

The landlord read from a September 26, 2012 email sent to him by the rental unit property owners. The property owner indicated they had received photographs of the unit which were very disturbing; that the condition was not good. The landlord directed the agent to retain the security deposit until the landlord gave their written consent to release the deposit.

The landlord confirmed that a claim against the deposit had not been made as the tenant was well aware of the damage she had caused to the unit. The landlord confirmed that the tenant walked through the unit with him at the end of the tenancy but that the inspection report was not completed at that time or signed by the tenant.

The tenant said she did not walk through the unit with the landlord at the end of the tenancy.

The landlord confirmed that the security deposit has not been returned to the tenant.

The tenant said that she wants the amount owed, in accordance with the legislation.

Analysis

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. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

There was dispute in relation to the state of the home at the end of the tenancy; however, the landlord has not submitted a claim for compensation.

Section 35 of the act requires a landlord to complete a move-out condition inspection with the tenant and for both of the parties to sign the report. If a tenant does not sign the report, then the landlord may do so. There was no dispute that the report was not completed with the tenant; therefore, she was not offered the opportunity to sign the report. If a landlord does not comply with section 35 of the Act, section 36 of the Act determines that the right of a landlord to claim against the deposit is extinguished.

Therefore, even if the landlord had made a claim against the deposit, the landlord's right to claim against the deposit for damage to the unit had been extinguished.

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 38 of the Act 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)

As the landlord had extinguished the right to claim against the deposit for damage to the unit; once the landlord received the tenant's forwarding address, as part of the tenant's application given to the landlord on either September 9th or 10th, 2013; the landlord then had fifteen days to return the deposit to the tenant.

When the landlord failed to return the deposit within fifteen days, the landlord breached section 38(1) of the Act. The landlord did not have the tenant's written permission to retain the deposit and he did not have an Order allowing him to retain the deposit; in

accordance with section 38(4) of the Act. When the landlord failed to return the deposit 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 \$1,300.00.

Based on these determinations I grant the tenant a monetary Order for \$1,300.00. 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 \$650.00 security deposit; a monetary Order has been issued.

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: December 06, 2013

Residential Tenancy Branch

