



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord: MNSD, MND, MNDC, FF
For the tenant: MNSD, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the “Act”).

The landlord applied for authority to retain the tenant’s security deposit, a monetary order for alleged damage to the rental unit and for money owed or compensation for damage or loss, and for recovery of the filing fee.

The tenant applied for a return of her security deposit, key deposit, and for recovery of the filing fee.

The landlord’s agent (hereafter “landlord”) and the tenant’s advocate attended and the hearing process was explained to the parties. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties 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.

Preliminary matter-The landlord's agent is the spouse of the landlord and said that he was representing the landlord as she was unable to communicate in English.

The landlord’s agent, during the course of the hearing, continually asked me to repeat questions multiple times, following which the agent did not appear to understand the question as he began giving unrelated responses or did not answer at all. I asked the agent if there was someone else who would be able to represent or interpret for him, and he said there was not.

As the landlord's agent could not understand my questions, I allowed the landlord to speak freely in support of the landlord's application and in response to the tenant's application. I note that the landlord's agent was able to communicate well when speaking of the applications.

Preliminary matter #2-The tenant's advocate stated that the tenant did not receive the landlord's documentary evidence, which was not filed with the Residential Tenancy Branch ("RTB") until 8 business days prior to the hearing. The landlord provided testimony that the same documentary evidence was sent to the tenant at the correct address on September 27, 2013. The tenant's advocate did not request an adjournment of the hearing.

I have determined that the landlord served the evidence as required by section 88 of the Act and have accepted it for consideration. Further, I have determined that the acceptance of the landlord's evidence was in no way detrimental or prejudicial to the tenant, as the evidence ultimately had no impact on my decision, other than to disallow a claim of the landlord, as more fully explained later in this decision.

Issue(s) to be Decided

1. Is the landlord entitled to retain the tenant's security deposit, further monetary compensation, and to recover the filing fee?
2. Is the tenant entitled to a return of her security deposit, key deposit, and to recover the filing fee?

Background and Evidence

In response to my question, the landlord could not provide the start date of the tenancy. The written tenancy agreement supplied by the landlord stated that the tenancy started on August 18, 2011, for a one year fixed term, for a monthly rent of \$1800, and a security deposit of \$900. The tenant's advocate did not dispute this information.

The landlord said that the tenancy ended roughly on July 15, 2012, when the tenant vacated the rental unit. The tenant's advocate said that the tenants did move out in July, but paid rent through August 18, 2012, the length of the fixed term; thus the end of the tenancy was August 18, 2012.

Landlord's application-

The landlord's monetary claim is \$1446.71, comprised of \$364.30 for ¼ of the natural gas bill, cleaning for \$300, stove repair for \$732.41, and door repair for \$50.

The landlord stated that after the tenant moved out the rental unit and carpet needed cleaning and the stove top and door required a repair.

The landlord submitted that the tenant was required to pay for the natural gas consumed by her and her family.

In response to my question, the landlord admitted that there was not a move-in condition inspection report or move-out condition inspection report. The landlord submitted that one was not needed as the rental unit was new.

The landlord claimed that the tenant did not provide her written forwarding address until more than a year following the tenancy, having received it on August 22, 2013.

The landlord's additional relevant documentary evidence included copies of Fortis bills, a note mentioning a service fee, appearing to be regarding the stove repair, a generic receipt showing a payment of \$300 for cleaning, a photo of the stove top, and another form of a receipt showing a payment of \$50 for door repair. The two receipts did not list the name of the payee and was otherwise non-specific.

In response, the tenant's advocate stated that there was no walk-through inspection and no condition inspection reports. The advocate stated that he had personal knowledge that the rental unit was kept in immaculate condition, that the tenant spent 3 days in cleaning the rental unit, and there was definitely no damage to the rental unit committed by the tenant.

The advocate stated that the tenant spent \$300 in having the carpet cleaned at the end of the tenancy.

The advocate stated that the landlord never mentioned anything about the tenant being required to pay for the heating and hot water and did not agree to pay for it in the tenancy agreement.

Tenant's application-

The tenant is asking for a return of her security deposit of \$900 and the key deposit of \$40, which the landlord has failed to return.

In response to my question, the advocate was not sure of the date the landlord was provided the tenant's written forwarding address, but stated it was approximately a year after the tenancy ended.

The tenant's relevant documentary evidence included a copy of the letter informing the landlord of the tenant's written forwarding address, which was dated August 19, 2013.

In response, the landlord testified that he received the tenant's written forwarding address, in a registered mail letter, on August 22, 2012, although he had been asking the tenant earlier what her new address was so that he could send the utility bills. The landlord did not deny that he had not returned the key deposit of \$40.

Analysis

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

Landlord's application-

In a claim for damage or loss under the Act 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 party took reasonable measures to mitigate their loss.

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

Cleaning, door repair, stove repair-

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 her obligation under of the Act of completing the inspections and there is also no independent record of the condition of the rental unit at the start and end of the tenancy. There was only one photograph of the rental unit, said to be taken at the end of the tenancy, the stove top.

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

I therefore find the landlord has submitted insufficient evidence to prove his claim for \$300 for cleaning, \$732.41 for stove repair and \$50 for a door repair, without leave to reapply.

Natural gas usage-

I find the tenancy agreement does not require the tenant to pay for natural gas usage, as at first the tenancy agreement states that the tenant "covenants" to pay "rent, utilities," without naming what those specific utilities incorporate, or stating a percentage; secondly the tenancy agreement goes onto state that the tenant will pay for cable and telephone, and that electricity is included in the monthly rent. The tenancy agreement is silent as to natural gas consumption of the tenant.

I find the tenancy agreement to be unclear and vague and consequently I cannot find that the tenant owed for natural gas consumption.

I therefore dismiss the landlord's claim for natural gas consumption of \$364.30.

I likewise dismiss the landlord's request to recover the filing fee.

Due to the above, the landlord's application is dismissed, without leave to reapply.

Tenant's application-

Under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding

address in writing and the end of the tenancy if the tenant's right to the security deposit have not been extinguished.

In the case before me I find that the evidence shows that the tenancy ended on August 18, 2012, and that the tenant transmitted her written forwarding address on August 19, 2013, which is 1 year and 1 day following the end of the tenancy; in other words, the tenant failed to supply her written forwarding address within one year of the end of the tenancy.

Although I find that the landlord extinguished her rights to make a claim against the security deposit for failure to provide a move-in or move-out condition inspection report as required by sections 24 and 36 of the Act, section 39 of the Act states that despite any other provisions of the Act, such as here, the landlord's rights to retain the security deposit being extinguished, the landlord may keep the tenant's security deposit if the tenant does not give the landlord a written forwarding address within one year of the end of the tenancy.

I must therefore and do so grant the landlord authority to retain the tenant's security deposit.

Key deposit-

Under section 6 of the Residential Tenancy Regulation, the landlord may charge a refundable key deposit, which is the case here.

I find the landlord had no such authority to keep the refundable key deposit, and I therefore order that the landlord return the key deposit of \$40 to the tenant, immediately.

I find some merit with the tenant's application, and I therefore grant her recovery of the filing fee of \$50.

I therefore find the tenant is entitled to a monetary award of \$90, comprised of the key deposit of \$40 and the filing fee of \$50.

Conclusion

The landlord's application for alleged damage to the rental unit, cleaning and natural gas consumption is dismissed, without leave to reapply.

The landlord is granted authority to retain the tenant's security deposit by operation of section 39 of the Act.

The tenant's application for monetary compensation is partially granted.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$90, which I have enclosed with the tenant's Decision.

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/landlord and the applicant/tenant.

Dated: December 09, 2013

Residential Tenancy Branch

