



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of his security deposit and pet damage deposit, doubled, and for recovery of the filing fee.

The tenant and landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. The landlord's witnesses were excused from the hearing, pending their testimony.

At the outset of the hearing, the documentary evidence was discussed, and the landlord raised no issue regarding service of the tenant's documentary evidence. The landlord confirmed that she did not send her documentary evidence to the tenant; I have excluded the landlord's evidence due to her failure to comply with section 4.1 of the Dispute Resolution Rules of Procedure (Rules).

Thereafter all 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 evidence and testimony before me that met the requirements of the Dispute Resolution Rules of Procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order, which includes their security deposit, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on August 12, 2012, ended on June 30, 2013, monthly rent was \$845, and the tenant paid a security deposit of \$422.50 and a pet damage deposit of \$200 at the beginning of the tenancy.

The undisputed evidence also was that the landlord has returned \$157.50 from the two deposits to the tenant.

The tenant gave evidence that the landlord was provided the tenant's written forwarding address in mid-July in a typed letter sent via mail.

The tenant is seeking monetary compensation of \$930, which is the balance of his security deposit and pet damage deposit, doubled.

The tenant submitted that there was no move-in or move-out condition inspection report.

The tenant's relevant documentary evidence included a copy of the written forwarding address, photographs of the rental unit, and registered mail receipts.

The landlord acknowledged receiving the tenant's written forwarding address on July 23, 2013, and that she has not made an application for dispute resolution. The landlord stated that she is entitled to keep the tenant's security deposit and pet damage deposit due to damage caused by the tenant and as the tenant did not attend the final inspection.

Further, the landlord acknowledged that she has returned a portion of the tenant's security deposit and pet damage deposit, in the amount of \$157.50.

In response to my question, the landlord submitted that there was a move-in condition inspection report, but confirmed that one was not provided in evidence. I note that this also includes her excluded documentary evidence.

I must further note that the landlord's witnesses did not testify at the hearing, as discussed with the landlord, as their testimony related to the condition of the rental unit, not the relevant issues, or was in relation to verbal opportunities to inspect the premises.

Analysis

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

Under section 38(1) of the Act, at the end of a tenancy, unless the tenant's right to a return of their security deposit or pet damage deposit has been extinguished, a landlord is required to either return a tenant's security deposit and pet damage deposit or to file an application for dispute resolution to retain the deposits within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy. If a landlord fails to comply, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act.

I do not find the tenant's right to a return of his security deposit has been extinguished in this case, as I find that the landlord failed to provide any evidence that there was a move-in condition inspection report, which meant that the landlord extinguished her rights to make a claim against the tenant's security deposit and pet damage deposit first. I further find there is no evidence from the landlord that the tenant was offered a final, written opportunity to inspect the premises at the conclusion of the tenancy.

In the case before me, the undisputed evidence shows that the tenancy ended on June 30, 2013, that the landlord received the tenant's written forwarding address on July 23, 2013, and that the landlord has not applied for dispute resolution claiming against the security deposit or pet damage deposit. In contravention of the Act, the landlord made a deduction from the tenant's two deposits before returning a portion.

The landlord may only keep all or a portion of the security deposit or pet damage deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the tenant. Here the landlord submitted no evidence that she had authority to keep any portion of the security deposit or pet damage deposit. Therefore, I find that the landlord is not entitled to retain any portion of the security deposit or pet damage deposit, and under section 38 I must order the landlord to pay the tenant double his security deposit and pet damage deposit.

I find that the tenant is entitled to monetary award in the amount of \$1137.50, comprised of his security deposit of \$422.50, doubled to \$845, his pet damage deposit of \$200, doubled to \$400, and recovery of the filing fee of \$50 due to the tenant's successful application, less \$157.50 previously returned to the tenant.

Conclusion

The tenant's application has been granted and he has been granted a monetary award in the amount of \$1137.50.

I therefore grant the tenant a final, legally binding monetary order in the amount of \$1137.50, 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 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 subject to recovery 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: December 05, 2013

Residential Tenancy Branch

