



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNSD, FF

For the landlord: MNSD, MND, MNDC, 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 tenant applied for a return of her security deposit, doubled, and for recovery of the filing fee.

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

At the outset of the hearing, both parties acknowledged receipt of the other’s documentary evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary relevant evidence submitted prior to the hearing, respond to the other’s evidence, 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.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order comprised of double her security deposit and to recover the filing fee?

2. Is the landlord entitled to retain the tenant's security deposit, for further monetary compensation, and to recover the filing fee?

Background and Evidence

The undisputed evidence of the parties shows that this tenancy began on November 15, 2011, ended on October 1, 2013, monthly rent began at \$1200, the ending monthly rent was \$1240, and the tenant paid a security deposit of \$600 at the beginning of the tenancy.

The parties agreed that there is no move-in or move-out condition inspection report as required by the Residential Tenancy Act and that the landlord has not returned any portion of the tenant's security deposit.

Tenant's application-

The tenant's monetary claim is in the amount of \$1200, comprised of her security deposit of \$600, doubled. The tenant also claims for recovery of the filing fee.

The tenant testified that she provided her written forwarding address to the landlord on October 1, 2013, on a separate piece of paper, when she met the landlord at the rental property, and that the landlord has not returned any portion of her security deposit.

The tenant testified that her mother was a witness to the tenant delivering her written forwarding address, but the mother was not present to testify.

The tenant's relevant documentary evidence included a copy of the written tenancy agreement, which did not list a service address for the landlord, photos depicting the condition of the rental unit, email communication between the parties, with the tenant requesting the address of the landlord, and Canada Post confirmation that the landlord had received the registered mail package from the tenant containing the Notice of Hearing and the tenant's application.

Landlord's application-

The landlords' monetary claim listed in her application for dispute resolution is in the amount of \$4049; however the landlord failed to submit a detailed calculation of the breakdown of her monetary request.

In testimony explaining her claim, the landlord submitted that the tenant was responsible for a strata fee of \$200 as a move-in fee, \$200 for a move-out fee, and \$200 for a bylaw fine for a parking violation of \$200.

In response to my question, the landlord confirmed that the tenant had not signed a Form K agreement with respect to responsibility for strata fees.

The landlord also claims \$600 from the tenant for a pet damage deposit, as the tenant obtained a pet after the tenancy began, did not tell the landlord, and did not pay a pet damage deposit.

The landlord also claims \$621 for repairs for the damage by the tenant and cleaning, as shown by her receipt and photos.

The landlord also claims \$620 for repairs to damage by the tenant, as shown by the handwritten statement from an unidentified individual and the photos.

The landlord also claimed \$1200 as the tenant, according to the landlord, failed to provide a proper, 1 month's notice that she was ending the tenancy at the end of September 2013. The landlord, however, confirmed that she did not suffer a loss of rent revenue as she had obtained new tenants for the beginning of October 2013.

The landlord also submitted that the tenant took her couch, the replacement for which would be \$368.

In response to my question, the landlord said that the photos she submitted were taken the last week of the tenancy.

In response, the tenant denied taking the landlord's couch; however the tenant submitted that the landlord left her dirty couch and that had an allergy to the couch as it was full of pet hair and dander. The tenant stated that it was necessary to pay someone \$50 to remove the couch.

The tenant also submitted that the rental unit was dirty when she moved in and that it was necessary to hire someone to clean before she moved in. The tenant submitted that the rental unit was in better shape than when she moved in and that she thoroughly cleaned the rental unit prior to vacating, as shown by her photos.

The tenant denied damaging the washroom door, and that it was a design flaw that allowed the door to easily hit the hanger.

The tenant submitted that the landlord never informed her of any fees for moving in and out and that there was never a discussion that the tenant would be responsible for strata fees or fines.

Analysis

Tenant's application-

Section 38(1) of the *Act* requires a landlord 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 receiving the tenant's forwarding address in writing. Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the security deposit.

In the case before me, I find the tenant failed to prove that she provided the landlord her written forwarding address on October 1, 2013, as her testimony that she handed the landlord her forwarding address on a piece of paper was disputed by the landlord. I would be more likely to accept the tenant's evidence had she provided a corroborating witness to the transaction or proof that she had sent her forwarding address via registered mail. I find that disputed verbal testimony, when one party's version of events is disputed by the other party's version of events is not sufficient to meet the burden of proof.

I find that the landlord received the tenant's forwarding address in the tenant's application for dispute resolution on November 3, 2013; however, the landlord filed an application claiming against the security deposit within 15 days, or November 18, 2013. I therefore find that the tenant is not entitled to receive double her security deposit; however I find that the tenant is entitled to a return of her security deposit of \$600.

I allow the tenant recovery of her filing fee of \$50.

Due to the above I therefore grant the tenant a monetary award of \$650, comprised of her security deposit of \$600 and for recovery of the filing fee of \$50.

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 and repairs-

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 violated her obligation under of the Act of conducting inspections of the rental unit at the start and at the end of the tenancy and completing the inspections resulting in extinguishment of the landlord's right to the tenants' security deposit. There is also no independent record of the condition of the rental unit at the start of the tenancy.

In the absence of any other evidence, such as the condition inspection reports or photographs prior to the start of the tenancy, I do not accept the landlord's claim for damages to and cleaning the rental unit for which the tenant is responsible.

I therefore dismiss the landlord's claim for cleaning and repairs, which totaled \$1241.

Couch replacement-

I find the landlord submitted insufficient evidence that the couch she left in the rental unit had any value and I find it just as likely as not that the landlord left the couch in the rental unit for the tenant to remove. I therefore dismiss her claim for a couch replacement.

Pet damage deposit- In the case of a pet damage deposit, if one was required by the tenancy agreement and not paid, the landlord may issue the tenant a notice to end the tenancy. I do not find that to be the case here as the tenancy agreement did not require that the tenant pay a pet damage deposit.

I likewise find the landlord submitted insufficient evidence that the tenant obtained a pet during the tenancy.

A pet damage deposit, like a security deposit, is held in trust for the tenant during the tenancy, to be dealt with in accordance with the Act at the end of the tenancy. A pet damage deposit therefore cannot be a part of the landlord's claim for monetary compensation after the tenancy is over.

I therefore dismiss the landlord's claim for \$600 for a pet damage deposit.

Violation of the 1 month's notice provision-

I dismiss the landlord's claim as the landlord has not suffered a loss in any respect by the tenant allegedly failing to provide sufficient notice that she was ending the tenancy, whether true or not.

Strata fines-

In this case the landlord failed to have the tenant sign a Form K-Notice of Tenant's Responsibility with the tenancy agreement, which is a written acknowledgement that the tenant, renting within a strata development, has received a copy of the strata bylaws and agree to abide by them.

Without the form being signed by the tenant, the rules or bylaws do not become part of the tenancy agreement, and consequently, the tenant is not obligated to abide by the bylaws or pay the fines, as these issues are considered outside the jurisdiction of the Residential Tenancy Act.

As the tenant has not signed the Form K, which becomes part of the tenancy agreement, I find that the landlord has failed to prove that the tenant violated the tenancy agreement or the Act, and I dismiss her claim for \$600 for the move-in and move-out fee and the fine for an alleged parking violation.

Due to the above, I therefore find the landlord has submitted insufficient evidence to prove her claim for \$4049, as listed in her application, or in any amount, and I dismiss her application, without leave to reapply.

Conclusion

The tenant's application for monetary compensation is granted in part as I have found that she is entitled to a return of her security deposit \$600 and recovery of the filing fee of \$50.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$650, 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.

The landlord's application is dismissed without leave to reapply.

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: February 11, 2014

Residential Tenancy Branch

