



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: MNDC, MNSD
For the landlord: MND, MNSD, 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 and pet damage deposit and a monetary order for money owed or compensation for damage or loss.

The landlord applied for authority to retain the tenant's security deposit and pet damage 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.

Both parties attended the telephone conference call hearing. 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 evidence submitted prior to the hearing, make submissions to, me and respond to the other's evidence.

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 and the tenant stated that they filed documentary evidence which was not filed within 5 business days of the hearing, as required by section 3.5 of the Dispute Resolution Rules of Procedure.

The parties were informed at the hearing that I have excluded the additional documentary evidence, pursuant to section 11.5(2), as I determined that the acceptance would prejudice the other party, or result in a breach of the principles of natural justice. The parties were not prevented from testifying about or from their documentary evidence.

Issue(s) to be Decided

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

Background and Evidence

The parties agreed at the hearing that this tenancy was to begin on March 1, 2014, but that the tenant never moved into the rental unit. The monthly rent was to be \$775 and that the tenant paid a security deposit of \$400, and a pet damage deposit of \$300. The two deposits have not been returned to the tenant. The deposits were paid by the tenant making a payment of \$200 on February 8, 2014, and \$500 on February 22, 2014.

The documentary evidence submitted by both parties was a document entitled "Rental/Lease Agreement," which was handwritten and signed by both parties; however, the tenant's name and the start date of the tenancy was not written in the document.

Tenant's application-

The tenant's monetary claim is listed as \$1350, which includes her claim for a return of her security deposit of \$400, her pet damage deposit of \$300, and \$650 for rent for March for her current rental unit.

In support of her application, the tenant submitted that she never moved into the rental unit as the landlord refused to perform an inspection of the rental unit until the tenant paid the balance of the pet damage deposit of \$75. Without having an inspection, the tenant submitted that she did not want to pay the balance of the deposit; as well, the tenant submitted that the landlord cancelled the tenancy agreement.

The tenant's additional relevant documentary evidence included copies of text messages between the parties.

In response, the landlord denied the allegations of the tenant.

In response to my question, the landlord confirmed she was aware of the tenant's forwarding address on March 18.

Landlord's application-

The landlord's listed monetary claim is \$4000, which includes her claim of \$100 for the remainder of the pet damage deposit, \$800 for non payment of rent for March, \$1600 for loss of rent, and \$1500 for damage to the property.

In support of her application, the landlord submitted that she is entitled to be paid the remainder of the pet damage deposit in the amount of \$100, as the tenant never finished paying the amount owed of \$400.

As to the loss of rent for March, the landlord submitted that the tenant never showed up on March 1 to move in, as per the tenancy agreement, and did not communicate with her that she was not moving in. As a result, the landlord submitted that the tenant owed unpaid rent for March 2014.

As to the loss of rent revenue of \$1600, the landlord submitted that she has been unable to secure new tenants for the rental unit, and that due to the tenancy with this tenant being for a fixed term of 1 year, the tenant owed for subsequent months of rent revenue.

In response to my questions, the landlord stated that she did advertise the rental unit, beginning March 1, 2014, but that adverse comments made by the tenant caused the online advertising website to remove her advertisement. The landlord submitted that the tenant made it difficult to keep her advertisements on the website.

The landlord submitted that she also advertised in a local publication, listing monthly rent of \$900.

As to the landlord's claim for damage to the rental unit, the landlord submitted that her front door was kicked in and the door handle was pried open.

In response to my question, the landlord submitted that as proof that the tenant was responsible for damaging the front door, she saw an acquaintance of the tenant leaving the premises.

The landlord's additional documentary evidence which was timely submitted and considered was a one page copy of an impartial text message from the tenant.

In response, the tenant submitted that the landlord ended the tenancy by sending a text message that the contract was null and void, and denied that she was with the party said by the landlord to have caused damage to the door.

Analysis

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, both parties 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 claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

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

Landlord's application-

As the landlord has claimed against the tenant's security deposit and pet damage deposit, I will consider the landlord's application first.

In the case before me, after examination of the handwritten tenancy agreement signed by both parties, I find the tenancy agreement to be deficient as the document did not list the name of the tenant nor the start date of the tenancy; however, after hearing from the parties, I find that they agreed the tenancy was to begin on March 1, 2014, with a monthly rent of \$775, as shown also by a separate sheet of paper submitted by the tenant. I also find that the tenancy was to be for a fixed term of 1 year and that the tenant was to pay a security deposit of \$400 and a pet damage deposit of \$400 prior to taking possession.

The undisputed evidence shows that, prior to the agreed upon start date of the tenancy, the tenant paid the security deposit of \$400 and \$300 of the pet damage deposit set to be \$400. The tenancy agreement shows that the two deposits were to be paid "before the tenant takes possession."

I find that the documentary evidence of the tenant, the text messages between the parties, shows that the landlord was insistent upon receiving the full amount of the security deposit and pet damage deposit prior to March 1, and before allowing a move-in inspection. Residential Tenancy Regulation #14 states that a condition inspection report must be completed when the rental unit is empty, which I find implies that the tenant does not necessarily have possession if a key has not been given.

It is clear from the tenant's evidence that the landlord declared the tenancy agreement to be null and void prior to March 1, 2014, as the tenant did not pay the remaining \$100 from the pet damage deposit prior to that date.

I find the landlord violated the Act when she terminated the tenancy without following the requirements of section 44 of the Act, which provides the ways a tenancy ends, with subsection (1)(a)(iii) providing that one way a tenancy ends is when a landlord issues the tenant a 1 Month Notice to End Tenancy for Cause pursuant to section 47 of the Act, in this case, when a tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement.

In other words, the landlord did not have authority to end the tenancy due to failure to pay a security deposit or pet damage deposit as required under a tenancy agreement, if that was the case; however, I find the tenancy agreement to be vague and confusing as to when the deposits were to be paid at any rate, as the requirement in that document was that payments were to be made prior to possession, not inspection.

As I find the landlord violated the Act in ending the tenancy prior to the start date, I find the landlord is not entitled to unpaid rent for March and loss of rent revenue for subsequent months as the tenant's obligation to pay rent ended when the landlord illegally ended the tenancy in February 2014.

I therefore dismiss the landlord's application for unpaid rent of \$800 and loss of rent for \$1600.

I also dismiss the landlord's claim for damage to the rental unit of \$1500, as the tenancy never began, and due to the landlord's statement that she did not see the tenant commit any act of damage.

I also dismiss the landlord's claim for the balance of the tenant's pet damage deposit of \$100, as the tenancy ended due to the actions of the landlord and due to the reason that a pet damage deposit is held in trust for the tenant during the tenancy. In this case, the tenancy never began, as previously explained.

Due to the above, I dismiss the landlord's application, 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 claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

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 amount of their security deposit.

The landlord received the tenant's forwarding address on March 18, 2014, as confirmed at the hearing, and filed her application claiming against the security deposit within 15 days, as the application was filed on March 25, 2014. Although the landlord filed her application within the required time frame, I have dismissed the landlord's application claiming against the security deposit and I therefore order that the security deposit of \$400 be returned to the tenant.

As I have so ordered the return, I grant the tenant a monetary award of \$400.

Pet damage deposit-

Pursuant to section 38 (7) of the Act, a pet damage deposit may be used only for damage caused by a pet. Similarly, Residential Tenancy Branch Policy Guideline #31 states that a landlord may apply to an arbitrator to keep all or a portion of the pet damage deposit but only to pay for damage caused by a pet

As the landlord's claim was for unpaid rent and loss of rent revenue, and not for damage caused by a pet, I therefore find that the landlord possessed no such right to make a claim against the pet damage deposit and was required to return the tenant's pet damage deposit within 15 days of March 18, 2014 and failed to do so. Therefore pursuant to section 38(6)(b), the landlord must pay the tenant double the amount of the pet damage deposit of \$300, and I award the tenant the amount of \$600.

Rent for the current rental unit-

I dismiss the tenant's claim for rent for her current rental unit, as I find this is an expense the tenant would be required to pay whether she lived in the rental unit in question or another home. Additionally, the tenant did not submit proof of any expense incurred, as required in meeting her burden of proof.

Due to the above, I find the tenant is entitled to a monetary award of \$1000, comprised of her security deposit of \$400, and her pet damage deposit of \$300, doubled to \$600.

Conclusion

The landlord's application is dismissed.

The tenant's application has been granted in part as I have found she is entitled to a monetary award of \$1000.

The tenant is granted a monetary order in the amount of \$1000 and it is enclosed with her 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*.

Dated: May 2, 2014

Residential Tenancy Branch

