



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, O

Introduction

This was a hearing with respect to the tenant's application for the return of a portion of her security and pet deposits. The hearing was conducted by conference call. The applicant and her co-tenant called in and participated in the hearing. The landlord did not attend, although she was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on January 22, 2014.

Issue(s) to be Decided

Is the tenant entitled to the return of a portion of her security and deposits and if so, in what amount?

Background and Evidence

The rental unit is a furnished strata title apartment in Vancouver. The tenancy started for an initial term of seven days and thereafter for a further term of two months, commencing on November 1, 2013 and ending on December 31, 2013. The agreement provided that the tenancy could continue thereafter on a month to month basis. The monthly rent was \$2,285.00. The tenant paid a security deposit of \$1,142.50 and a pet damage deposit of \$1,142.50. The deposits were paid on October 4, 2013. An addendum to the tenancy agreement provided that the landlord would deduct a \$15.00 cleaning fee from the security deposit.

The tenants arranged to move out of the rental unit on December 31, 2013, but they contacted the landlord by e-mail; they asked for and received the landlord's permission to vacate the rental unit at 9:00 A.M. on January 1, 2014. The landlord did not mention any charge for the additional stay.

On January 11, 2014 the tenant received an e-mail from the landlord that said the landlord had sent the tenant a money transfer. The message also stated:

I have deducted the cleaning fee of \$150, a move in/out fee that the strata billed me of \$150 and \$100 for the New Years Eve stay for a total of \$1885.

The tenant responded by e-mail as follows:

Thank you for the transfer, however a \$150 move in/out fee was not in our contract but if I am missing a clause please point it out to me. In terms of the additional night, you had offered it and never mentioned an additional cost. Because there was no mention of more money and because of the 9am move out time, we had assumed you were offering it as a courtesy. Had we known there was a cost, we would have moved out on the date you originally set. Please transfer the remaining \$250.

The landlord did not respond to this message. The tenant referred me to a provision of the strata corporation bylaws; it provided as follows:

The sum of \$150.00 will be charged against the strata lot owner on each occasion where there is a change in occupancy and the incoming person moves in furniture. This fee is designated as a "Move-In" fee, is chargeable to the strata lot and is due and payable by the owner. If within one year of this move in activity another change in occupancy occurs and a move in is requested, the move in charge will be \$300.00.

The tenants testified that they rented the unit as a furnished suite and arrived with only their suitcases. They did not move any furniture and said that they should not have been charged a move in fee by the landlord.

At the hearing the tenant requested the return of the move in fee and the \$100.00 charged for the December 31st stay as well as the filing fee for their application. They did not request any further amounts and did not seek payment of double the amount withheld from the deposit.

Analysis

Section 38 of the *Residential Tenancy Act* provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord

must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. Section 38(6) provides that a landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit and pet deposit.

The tenants did not give the landlord written authority to deduct either a move in fee or an overnight charge for December 31st. The tenants have request repayment of the withheld amount of \$250.00, but they waived any claim to double the amount.

Conclusion

I find that the tenant is entitled to a monetary award in the amount of \$250.00 as claimed. The tenant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$300.00 and I grant the tenant a monetary order against the landlord in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that Court.

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: June 2, 2014

Residential Tenancy Branch

