



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: 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 for recovery of the filing fee paid for this application.

The landlords applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The tenant and the landlords 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 all 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.

At the outset of the hearing, the landlord mentioned that they had not received the tenant's application for three weeks after it was filed. As the tenant's application was made on May 14, 2014, and the hearing was on September 17, 2014, I determined that the landlords were not unduly prejudiced by the delay of three weeks, and I declined to dismiss the tenant's application.

Neither party raised an issue with service of the documentary 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.

Issue(s) to be Decided

1. Is the tenant entitled to a return of her security deposit and for recovery of the filing fee paid for this application?
2. Are the landlords entitled to monetary compensation and for recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this month-to-month tenancy began on July 1, 2013, ended on January 27, 2014, when the tenant vacated the rental unit, monthly rent was \$800, and that the tenant paid a security deposit of \$400.

The tenant submitted that she vacated the rental unit on January 26, 2014.

The undisputed evidence also shows that the landlords attempted to return a portion of the tenant's security deposit, but that she refused the payment.

Tenant's application-

The tenant's monetary claim is \$400, for the return of her security deposit.

The tenant submitted that after the tenancy ended, she provided the landlords her forwarding address by telephone, and that although the landlords attempted to return a portion of the security deposit, she did not accept the partial payment as she disagreed with their unauthorized deduction.

The tenant's relevant documentary evidence included the written tenancy agreement and papers containing the landlords' calculations.

In response, the landlords submitted the tenant owed for unpaid utilities and therefore were entitled to retain a portion of the tenant's security deposit.

Landlords' application-

The landlords' monetary claim is \$800, for loss of rent revenue due to the tenant not providing the landlords a full month's written notice that she was moving. The landlords did not specify the month for which they were claiming loss of rent revenue, but presumably the month was February 2014, the month after the tenancy ended.

The landlords submitted that the tenant provided verbal notice on January 6, 2014, that she was vacating by the end of the month.

The landlord confirmed that they have not attempted to find a new tenant, as tenants are "too much trouble," and they wanted to take a break from renting.

The landlords' relevant documentary evidence included the written tenancy agreement and written communication from the tenants.

Analysis

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

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.

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.

In the case before me I find that the tenant did not provide the landlord with a written forwarding address in the appropriate manner, as a telephone call is not compliant with the Act; however, I find the landlords became aware of the tenant's forwarding address when they received her application for dispute resolution, and that they then made their application for dispute resolution claiming against the tenant's security deposit.

I will address my finding on the tenant's monetary claim after addressing the landlord's application.

Landlord's application-

As to the issue of loss of revenue, Section 45(1) of the Act requires a tenant to give written notice to end the tenancy at least one clear calendar month before the next rent payment is due.

In this case, I accept that the tenant failed to provide sufficient notice to end the tenancy, by her failure to give notice in writing to the landlords at least one calendar month prior to the end of the tenancy. However, a landlord is required under section 7(2) of the Act to take reasonable steps to minimize their loss. The landlords confirmed that they made no attempt to re-rent the rental unit and I therefore find that they failed to take any steps to minimize their loss for February 2014.

I therefore dismiss their claim for \$800, as well as their request to recover the filing fee paid for this application.

Both applications-

As I have dismissed the landlords' application claiming against the tenant's security deposit, I order the landlord to return the security deposit to the tenant forthwith.

As I have ordered the landlords to return the tenant's security deposit, I also grant the tenant's request to recover the filing fee paid for her application, in the amount of \$50.

Conclusion

The tenant's application has been granted as I have found she is entitled to a monetary award of \$450, comprised of her security deposit of \$400 and the filing fee of \$50.

The tenant is granted a monetary order in the amount of \$450, pursuant to section 67 of the Act, and it is enclosed with her Decision.

Should the landlord fail to pay the tenant this amount without delay, the order may be served on the landlords and may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlords are advised that costs of such enforcement are recoverable from the landlords.

The landlords' application is dismissed.

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: September 24, 2014

Residential Tenancy Branch

