



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for authority to keep all or part of the tenant's security deposit, a monetary order for money owed or compensation for damage or loss, unpaid rent and alleged damage to the rental unit, and for recovery of the filing fee paid for this application.

The landlord's agents (hereafter "landlord"), tenant "EV", and her advocate attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The landlord submitted that both tenants were served with the landlord's application for dispute resolution and notice of hearing via registered mail and provided the tracking number for both mailings. I accept that tenant "DV" was also served in accordance with section 89(1) of the Act.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary matter-I note that the landlord's documentary evidence consisted of proof of the registered mail service. The landlord submitted that she also sent in evidence of the application for tenancy and the cancellation of the rental on February 3, 2015; however, this evidence was not sent with their application, filed on August 12, 2014, as required by the Rules, and not before me at the hearing. The tenant denied receiving the evidence. During the hearing, the landlord referred to the application for tenancy

signed by tenant EV, a copy of which was also in front of the tenant and her advocate during the hearing. I considered this evidence crucial to my determination in this matter, and due to lack of an objection by the tenant, I allowed the landlord to fax the document after the hearing had concluded. The landlord did comply and faxed the document shortly after the hearing.

The tenant submitted documentary evidence, which consisted of, but not limited to, a written tenancy agreement, a written summary, and her telephone records. The landlord did not dispute receiving the documents.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

This tenancy never began, although a written tenancy agreement was signed by EV and the landlord on June 20, 2014, for an effective start date of August 1, 2014, with a monthly rent of \$1000.00. The tenancy agreement also states that a “deposit” of \$500.00 was payable in advance. The landlord referred to this deposit as a security deposit during the hearing, and this amount was collected by the landlord via a credit card charge on the tenant’s account.

The landlord’s monetary claim is \$1500.00, comprised of \$1000.00 for August 2015 rent and a “lease” cost of \$500.00.

The landlord submitted that they are entitled to loss of rent revenue for August of \$1000.00 as the tenants broke the lease by never moving into the rental unit. The landlord submitted they acquired new tenants as soon as possible, in this case for September 2014, however, the late notice on July 30, 2014 by the tenant did not allow them to find a tenant for August 2014.

The landlord submitted that she always explains to tenants the security deposit is automatically forfeited if they break a lease. The landlord submitted that this amount was the lease costs as claimed by the landlord in their application.

The landlord confirmed that potential tenants are entitled to a revocation period of 5 days after signing the application for tenancy and the written tenancy agreement, but that the cancellation notification is required to be in writing.

Tenant's response-

The tenant submitted that she was required to give the landlord 4 pieces of information in order to process the application for tenancy, and in this case, included a credit card and a debit card.

The tenant submitted further that the landlord informed her that she had 5 days to withdraw her application, and that she did so on June 24, 2014, when she left a 55 second voice mail on the landlord's telephone and never heard from the landlord that there was an issue. The application for tenancy and written tenancy agreement were signed on June 20, 2014. The tenant submitted a phone record showing a call to the landlord on June 24, 2014. I note the landlord confirmed this telephone number was hers.

The tenant submitted further that she did not hear from the landlord after that phone call, but later in July her credit card was charged \$500.00. The tenant submitted further that the landlord had attempted to charge her credit card \$1000.00, but by this time she cancelled the card to prevent further charges by the landlord.

The tenant submitted that she was required to go by the office to speak to the landlord about the charge, and the landlord insisted that she sign a document cancelling the tenancy agreement. The tenant submitted she was unaware that the landlord would attempt to use the date on the written cancellation as the date she gave her notice.

Landlord's response-

The landlord submitted that she receives many phone calls throughout the day.

Analysis

In the case before, after reviewing the landlord's application for tenancy and the written tenancy agreement, it appears the wording in the landlord's documents are meant to be confusing to tenants. For instance, the landlord never uses the words "security deposit," either on the written tenancy agreement or the application for tenancy, but instead refers to a "deposit," and in this case, the "deposit" was one half of the monthly rent.

Section 17 of the Act allows a landlord to collect a security deposit, and no other deposits, other than a pet damage deposit if the circumstances are such that the tenant

has a pet, or a refundable key deposit, in accordance with Residential Tenancy Regulation 6. [My emphasis added]

The landlord's application for tenancy also requires that the "deposit" is automatically forfeited if an applicant cancels the application or tenancy.

I have reviewed the landlord's application for tenancy and find that the tenant was allowed to withdraw her application within 5 days of making it, or here, on June 20, 2014. I do not find that the tenant was required to give this withdrawal in writing and I find the tenant submitted sufficient evidence via her phone records to show that she did contact the landlord to withdraw the application on June 24, 2014. I do not accept that the cancellation occurred on July 30, 2014, as I accept that the landlord required the tenant to sign the document that day, despite having previously cancelled the application.

I therefore dismiss the landlord's application for loss of rent revenue for August 2014, as I find the tenancy had been properly cancelled by the tenant as allowed in the application for tenancy.

Section 20(e) of the Act states that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit at the end of the tenancy agreement.

I find that the clause relied upon by the landlord to retain the tenant's security deposit is unenforceable under the Act and I therefore dismiss their application to retain the security deposit of \$500.00, or in this case, the amount of the security deposit taken from the tenant's credit card account as a "lease cost".

Due to the above, I dismiss the landlord's application, including a request for recovery of the filing fee, without leave to reapply.

As I have dismissed the landlord's application claiming against the security deposit, I order the landlord return the tenants' security deposit in full, immediately, as provided under Residential Tenancy Branch Policy Guideline 17.

As I have ordered that the landlord return the tenants their security deposit, I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$500.00, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay, the monetary order may be served upon the landlord and 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.

Conclusion

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

The landlord is ordered to return the tenants' security deposit and the tenants have been granted a monetary order for \$500.00.

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: March 9, 2015

Residential Tenancy Branch

