



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

aA matter regarding Oakwood Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD; MNDC

Introduction

This is the Tenant's application for return of the security deposit and compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant sent the Landlord the Notice of Hearing documents and copies of her documentary evidence by registered mail, sent on October 29, 2014..

It was also determined that the Landlord sent each of the Tenants its documentary evidence by registered mail to the Tenant's address for service, on March 19, 2015. The Landlord's agent stated that the documents were returned to the Landlord, "moved". The Tenant stated that the Tenants have a new address, which she provided during the Hearing. If a party changes its address for service, it is expected to update their address for service with the Residential Tenancy Branch and the other party. I find that the Tenants were duly served with the Landlord's documentary evidence.

Issues to be Decided

- Are the Tenants entitled to a monetary award for double the amount of the security deposit pursuant to the provisions of Section 38 of the Act?

Background and Evidence

This tenancy ended on September 30, 2014. The Tenants paid a security deposit in the amount of \$925.00 and a pet damage deposit in the amount of \$500.00 on September 17, 2013. The Landlord has returned the pet damage deposit to the female Tenant and therefore the Tenants are only applying against the security deposit.

The Tenant acknowledged that on the day of the move-out condition inspection, she had agreed that the Landlord was entitled to retain the unpaid utilities in the expressed amount of \$452.62 from the security deposit. Therefore the amount of the security deposit in dispute is **\$472.38** (\$925.00 - \$452.62).

During the course of the Hearing, the parties attempted to come to a settlement agreement, but were unsuccessful.

The Tenant gave the following testimony:

Both parties were present on September 30, 2014, for a move-out condition inspection. The Tenant testified that the parties agreed that the Tenant was responsible for the cost of replacing a mirrored closet door in the bedroom, but that the Landlord's agent was unsure of the cost of replacement. The Tenant stated that she told the Landlord's agent that she would arrange with the owner to replace the door.

The Tenant testified that the Landlord's agent told her that she would provide the Tenants with a copy of the completed Condition Inspection Report along with return of the balance of the security deposit at the forwarding address the Tenants provided on September 30, 2015.

The Tenant testified that she looked into the replacement cost of the door and found that it was \$217.00. The Tenant stated that she sent the Landlord's agent a text on October 5, 2014, asking if she (the Landlord) would purchase the door with money from the security deposit and then the Tenants would install the door to avoid installation costs. The Tenant testified that the Landlord's agent would not agree to this arrangement.

The Tenant testified that she had no further contact with the Landlord's agent until the Tenant called the Landlord on October 15, 2014, to find out the cost of the door replacement. She stated that the Landlord's agent said she would send the Tenants documents at the end of the day.

The Tenant testified that she received the security deposit breakdown from the Landlord on October 21, 2014, by regular mail. The Tenant stated that she was shocked that the cost of materials and labour was \$460.00, and that she would not be getting any of the security deposit back and was expected to pay the Landlord \$10.62. A copy of the security deposit breakdown was provided in evidence. The total balance, including taxes is \$483.00.

The Tenant testified that the Landlord did not provide her with a copy of the Condition Inspection Report within 15 days of the end of the tenancy or within 15 days of providing the Landlord with the Tenants' forwarding address.

The Landlord's agent CD gave the following testimony:

CD submitted that the female Tenant signed over the security deposit on the Condition Inspection Report and therefore the Tenants had no right to return of any of it. A copy of the Condition Inspection Report was provided in evidence by the Landlord. The Landlord also provided a copy of the invoice for the cost of replacing the door. The invoice is dated October 14, 2014.

CD became agitated during the teleconference and stated that it was "ridiculous" that the Landlord should be required to pay the Tenant double the amount of the security deposit.

CD confirmed that the Landlord has not filed an application for dispute resolution with respect to the security deposit.

Analysis

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act and the regulation.

Section 20(2) of the regulation provides:

(2) In addition to the information referred to in subsection (1), a condition inspection report completed under section 35 of the Act [*condition inspection: end of tenancy*] **must contain the following items** in a manner that makes them clearly distinguishable from other information in the report:

- (a) a statement itemizing any damage to the rental unit or residential property for which the tenant is responsible;
 - (b) if agreed upon by the landlord and tenant,
 - (i) **the amount** to be deducted from the tenant's security deposit or pet damage deposit,
 - (ii) the tenant's signature indicating agreement with the deduction, and
 - (iii) the date on which the tenant signed.
- [my emphasis added]

In this case, I find that the Tenant did not agree that the Landlord could retain \$472.38 from the security deposit for the cost of replacing the closet door. The Condition Inspection Report does not disclose any amount for the replacement cost, or any amount of the balance due to the Tenant or the Landlord.

38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has 15 days to either:

1. repay the security deposit in full, together with any accrued interest; or
2. make an application for dispute resolution claiming against the security deposit.

The Landlord did not file an application for dispute resolution against the security deposit or return the balance of the security deposit to the Tenant within 15 days.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

Therefore, I find that the Tenant is entitled to a monetary order for double the amount of the security deposit that the Landlord withheld ($\$472.38 \times 2 = \mathbf{\$944.76}$).

Section 36(2) of the Act provides:

36(2) Unless the tenant has abandoned the rental unit, **the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord**

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I explained to the parties that although the Landlord has extinguished its right to claim for damages against the security deposit under Section 36(2) of the Act, the Landlord retains the right to file an application for damages under Section 67 of the Act, if it so desires.

Conclusion

I hereby provide the Tenant with a Monetary Order in the amount of **\$944.76** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: April 15, 2015

Residential Tenancy Branch

