



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Miecór Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for a return of her security deposit, 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, her daughter/agent, and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, 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.

Issue(s) to be Decided

Is the tenant entitled to a monetary order comprised of her security deposit, doubled, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this tenancy began on April 1, 2011, monthly rent at the beginning of the tenancy was \$550.00, and that the tenant paid a security deposit of \$275.00. The landlord confirmed the security deposit has not been returned to the tenant.

The tenant stated that she provided the landlords with her written forwarding address, by hand delivery to this landlord, on October 30, 2014, when she gave the landlord her notice to vacate for the end of November 2014.

The tenant's monetary claim is \$650, comprised of her security deposit, which she claimed on her application was of \$325.00, doubled.

The tenant submitted that she cleaned the rental unit to the best of her ability and with the assistance of a lot of family members, but was informed by the landlord here that she would not be getting her security deposit as the rental unit had to be cleaned.

The tenant's relevant documentary evidence included a condition inspection report, which notes information from the move-in inspection, but is left blank as to a move-out inspection.

Landlord's response-

The landlord confirmed that he received the tenant's written forwarding address, as she moved across the hallway to her daughter's apartment.

The landlord submitted that the parties conducted a move-out inspection and that no cleaning had been done. The landlord mentioned that the carpet had not been cleaned and that a bedroom window was broken.

The landlord submitted that the tenant had signed a document agreeing to charges for damages of \$361.49, which exceeded the tenant's security deposit of \$275.00 by \$86.49. The landlord submitted a copy of the agreement noting a charge for cleaning, cleaning supplies, carpet shampoo, and window repair, and containing the tenant's signature.

The landlord pointed to this agreement signed by the tenant as the reason for not returning the tenant's security deposit.

Other evidence submitted by the landlord was a copy of the condition inspection report; however, this report contained information on the condition of the rental unit at both the move-in and move-out. I note that on this report, the tenant has not signed the move-out portion of the report, nor has the landlord. It appears someone other than the tenant has printed the tenant's name.

In response to my question, the landlord confirmed that he did not provide the tenant with a copy of the final condition inspection report, only that he signed it and sent the document to head office.

In brief rebuttal, the tenant submitted there was never a final walk through of the rental unit, and that the landlord appeared at her new residence across the hall with the instructions to sign a document without telling her what the document contained.

The landlord denied these statements.

Analysis

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 deposit within 15 days of the later of receiving the tenant's forwarding address in writing. 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 her security deposit. In this case, although the tenant submitted that her security deposit was \$325.00, I find the evidence shows that the amount of \$275.00, as noted in the written tenancy agreement.

Despite subsection (1), Section 38(4) of the Act allows a landlord to retain the tenant's security deposit at the end of a tenancy if the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant. The landlord relies on this section of the Act to claim a right to keep the tenant's security deposit for damages in excess of the tenant's security deposit.

In the case before me, however, under section 38(5) of the Act, I find the landlord extinguished their rights to obtain written authority from the tenant to retain her security deposit. I made this determination as the landlord confirmed he had not provided the tenant a copy of the final condition inspection report, as required under 36(2)(C). Additionally, as there was no landlord or tenant signature on the final condition inspection report, I could not determine that the landlord conducted an inspection with the tenant.

Additionally, Residential Tenancy Branch Policy Guideline 17.7, states that the landlord's right to obtain the tenant's consent or file an application for dispute resolution claiming against the tenant's security deposit is extinguished if the landlord does not provide the tenant with a copy of the condition inspection report.

As I have found that the landlord extinguished their right to obtain the tenant's consent to keep the security deposit, I find the tenant is entitled to a return of her security deposit, and that this amount should be doubled, also pursuant to Residential Tenancy Branch Policy Guideline 17, *RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION*, and section 38 of the Act.

As I have ordered the landlord to return the tenant's security deposit and that she is entitled to double this amount, I also award the tenant recovery of her filing fee of \$50.00.

The tenant is therefore granted a monetary order, pursuant to section 67 of the Act, for \$600.00, comprised of her security deposit of \$275.00, doubled to \$550.00, and the filing fee of \$50.00. The monetary order is enclosed with the tenant's 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.

Conclusion

The tenant's application for monetary compensation is granted.

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 26, 2015

Residential Tenancy Branch

