



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gebhard Investments Ltd. and Gebhard Partners Canada L.P.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was an application by the tenant for the return of the balance of his security deposit and for a monetary award for what the tenant claimed was an overpayment of rent. The hearing was conducted by conference call. The tenant and the landlord's representative called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of his security deposit withheld by the landlord?
Is the tenant entitled to a monetary award for an overpayment of rent and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Nanaimo. The tenancy began on January 1, 2011. The monthly rent was \$725.00 plus a 425.00 monthly parking fee. The tenant and his wife were named as tenants in the agreement. The tenant paid a security deposit of \$362.50 at the start of the tenancy.

The tenant's wife died in August, 2011. The tenant continued to occupy the rental unit and pay rent until he gave written notice on June 27, 2014 to end the tenancy effective July 31, 2014.

The tenant participated in a move-out condition inspection at the end of the tenancy. At the move out inspection the landlord's representative told the tenant that the rental unit was not properly cleaned, in particular the cupboards and counter was dirty. The landlord's representative completed a written condition inspection report and requested that the tenant sign the report to authorize the landlord to retain the sum of \$50.00 from

the tenant's security deposit to cover the costs of cleaning. The tenant provided his forwarding address on the condition inspection report, but he refused to sign the report to authorize the landlord to retain any sum from his security deposit.

The landlord sent the tenant a cheque in the amount of \$312.50 as a refund of the tenant's security deposit. The landlord deducted the sum of \$50.00 from the refund without the tenant's written permission. The landlord did not apply to claim the security deposit or any portion thereof.

The tenant wrote to the landlord on September 17, 2014. In his letter he said that he was making two claims; the first was for the return of the balance of his security deposit. He pointed out to the landlord that did not give his written consent to the landlord to keep a portion of his deposit. With respect to the second claim the tenant said:

Claim #2 is for overpayment of rent in the amount of \$1800.00. Briefly, my wife and I entered into a tenancy agreement on 01 January, 2011, based on double occupancy, which required a surcharge of \$50.00 over that of the single occupancy rate. With the passing of my wife on 04 August, 2011, the rent should have been reduced by that surcharge, from the period August, 2011 to the end of tenancy 31 July, 2014, therefore the claim.

The landlord responded to the tenant's claims. With respect to the claim for the security deposit, the landlord's representative said that the tenant was irritated when the landlord's representative pointed out necessary cleaning. He said the tenant would not give a reason as to why he disagreed with the \$50.00 cleaning charge.

With respect to the tenant's second claim, the landlord's representative said that there is no double occupancy provision in the tenancy agreement. There are single bedroom units that are restricted to a maximum of two occupants, but there is no additional charge for a second occupant. The rental rates are dependent upon size, location and view.

Analysis

The tenant has claimed for the return of the remainder of his security deposit in the amount \$50.00. He has not any doubling of his original security deposit amount. I find that the tenant did not authorize the landlord to retain the sum of \$50.00 and he is entitled to the return of that amount as claimed.

There is no double occupancy provision in the tenancy agreement. The tenant's claim for a rent refund in the amount of \$1,800.00 is without merit and this claim is dismissed without leave to reapply.

Conclusion

The tenant is entitled to recover the \$50.00 filing fee for his application, for a total award of \$100.00 and I grant the tenant an order under section 67 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: July 27, 2015

Residential Tenancy Branch

