



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened as the 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 and pet damage deposit and for recovery of the filing fee paid for this application.

The tenant and the landlord's agents (hereafter "landlords") 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, neither party raised any issues regarding service of the application or the tenant's evidence.

Thereafter the participants 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 return of her security deposit, pet damage deposit, and to recovery of the filing fee paid for this application?

Background and Evidence

The tenant submitted that although the written tenancy agreement shows a start date of June 1, 2014, for this tenancy, she moved into the rental unit on May 15, 2015. The tenant submitted further that she vacated the rental unit on January 4, 2015, that monthly rent was \$950.00, and that she paid a security deposit and pet damage deposit of \$512.50 each. The evidence was that the tenant originally agreed to a rental unit on

the third floor of the residential property, for a higher rent, but was asked to move to a first floor suite instead, with a lower rent.

In support of her application, the tenant submitted that she provided her written forwarding address to the landlord on the move-out condition inspection report on January 3, 2015 and that she has not received either the security deposit or pet damage deposit from the landlord.

The tenant submitted further that when the tenancy began, the landlord was being represented by another agent, that through at least October 2014, she had issues with this agent due to the lack of response to her noise complaints, and that she was informed that the original agent was fired by the landlord at some point leading to October. The tenant submitted further that she was previously unaware of the two agents attending for the landlord at the hearing and that she had to supply her paperwork to the landlord, as the original agent failed to transfer any of the paperwork, such as the tenancy agreement, an agreement for a pet damage deposit, and the condition inspection report.

The tenant agreed that she signed over a portion of her security deposit for carpet cleaning, in the amount of \$82.95.

The tenant's relevant documentary evidence included the condition inspection report, the written tenancy agreement, a mutual agreement for payment of a pet damage deposit of half a month's rent, witness letters, and a registered mail receipt showing serviced of her application to the landlord on February 6, 2015.

In response, the landlord denied that the tenant paid a pet damage deposit, and that the landlord has no records of a pet damage deposit being paid. The landlord submitted further that they have a bank statement showing a security deposit paid on April 28, 2014, and that had the tenant paid a pet damage deposit, the bank deposit information would reflect that payment as well.

The landlord denied a forwarding address was provided on the condition inspection report and that the tenant forfeited her security deposit as she broke the terms of the lease agreement.

The landlord agreed that the tenant had provided her paperwork regarding this tenancy. In rebuttal, the tenant submitted that she made a withdrawal at her bank for the pet damage deposit and paid the same to the landlord.

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 and pet damage 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 and the end of the tenancy. If a landlord fails to

comply, then the landlord must pay the tenant double the security deposit and pet damage deposit, pursuant to section 38(6) of the Act, less any agreed upon deductions.

In the case before me, although the landlord's agent here denied that the tenant paid a pet damage deposit, I have reviewed the written tenancy agreement, signed by the tenant and the landlord's agent at the time, which notes that the tenant did pay both a security deposit and a pet damage deposit of \$512.50 each. A further separate written agreement shows that the tenant agreed to pay a pet damage deposit of a half month's rent, which in this case, appeared to be half of the higher rent for the third floor suite.

I find that on a balance of probabilities that the tenant did pay a security deposit and a pet damage deposit of \$512.50 each, as the same was reflected in the signed, written tenancy agreement. I relied less on the landlord's agents' testimony here, as the evidence shows that neither agent was involved with this tenant or tenancy or that they had been supplied any original or copied paperwork by the previous agents of the landlord. I also took note that the landlord did not supply any documentary evidence themselves.

I also find, after reviewing the condition inspection report, that the tenant provided at least a partial written forwarding address to the landlord on or about January 3, 2015. The condition inspection report shows, at least from my viewing, that the tenant listed her street name and number, but not the town or postal code; however, the landlord received the tenant's application with the full address of the tenant, claiming her security deposit and pet damage deposit when it was sent by registered mail on February 6, 2015. At that point, the landlord could very well have made their own application for dispute resolution to claim against the deposits and chose not to.

A legal definition of writing refers to a printed or scripted document, as opposed to spoken word.

I therefore find that the landlord received at least the tenant's partial written forwarding address on the condition inspection report on January 3, 2015, and the full forwarding address in her printed application mailed by registered mail on February 6, 2015, and that the landlord had 15 days from that date of receipt of the application to return the tenant's security deposit and pet damage deposit or file an application claiming against the two deposits, and the landlord failed to do so.

I therefore order the landlord to pay the tenant double her security deposit of \$429.55, which shows a deduction of \$82.95 for carpet cleaning, and double the pet damage deposit of \$512.50, pursuant to section 62(3) of the Act.

I also approve the tenant's request for recovery of her filing fee of \$50.00.

Due to the above, I grant the tenant a total monetary award of \$1934.10, comprised of her security deposit of \$512.50, less the agreed upon deduction of \$82.95, doubled to

\$859.10, her pet damage deposit of \$512.50, doubled to \$1025.00, and the filing fee of \$50.00.

I grant the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of her monetary award of \$1934.10, which 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 requesting a return of her security deposit and pet damage deposit, which was doubled by operation of the Act, 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: August 24, 2015

Residential Tenancy Branch

