



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and the application seeks monetary compensation for steam cleaning carpets and for a smoke and carbon monoxide detector.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The tenant was also accompanied by an advocate who also gave affirmed testimony. In order to permit the advocate to assist the tenant throughout the hearing, the advocate testified first. The landlord was given the opportunity to question the advocate and the tenant, and the advocate was given the opportunity to question the landlord respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit or pet damage deposit?
- Has the tenant established a monetary claim as against the landlord for recovery of carpet cleaning costs and a smoke and carbon monoxide detector?

Background and Evidence

The tenant's advocate is also the tenant's ex-husband and has some knowledge of the facts of the tenancy. He testified that this tenancy began as a fixed term on February 1, 2014 which was to expire on January 31, 2015 however the tenant moved out on September 1, 2014. Rent in the amount of \$1,350.00 per month was payable on the 1st day of each month and there are no rental arrears to the date the tenant moved out. Prior to the commencement of the tenancy the landlord collected a security deposit from

the tenant in the amount of \$1,350.00 as well as a pet damage deposit in the amount of \$450.00. The advocate wrote out the cheques, which were issued on a joint account with the tenant and saw the money come out of that account. He also wrote out 12 post dated cheques payable to the landlord and left them for the payment of the rent monthly to the end of the fixed term.

A move-in condition inspection report was completed at the commencement of the tenancy but the landlord refused to conduct a move-out condition inspection report at the end of the tenancy.

The tenant requested return of the security deposit and pet damage deposit but the landlord didn't return them. The tenant sent a letter to the landlord dated March 17, 2015 requesting it again, and a copy has been provided. The advocate believes the letter was sent by email, but is not certain. The letter is dated March 17, 2015 and contains a forwarding address of the tenant.

The landlord has not returned any portion of either deposit and has not served the tenant with an application for dispute resolution claiming against them.

At the beginning of the tenancy, the carpets were very dirty and the tenant had them professionally cleaned before moving in. A copy of the receipt has been provided and it is dated January 29, 2014 in the amount of \$181.65 which the tenant claims from the landlord.

Also, the advocate attended the rental unit and felt that since the only heat source was the gas fireplace, he was concerned and the landlord was told that but didn't respond. The advocate purchased a carbon monoxide detector/smoke detector and installed it in the rental unit, however the amount of the claim is not specified and no evidence has been provided of the cost.

The tenant testified that the 1 year fixed term tenancy began on February 1, 2014 and she moved out early due to health issues, having given the landlord notice on July 17, 2014 by email and by text message effective August 31, 2014.

Prior to the commencement of the tenancy the landlord attended at the tenant's home and she gave him 2 cheques for the security deposit and the pet damage deposit in the amounts of \$1,350.00 and \$450.00 respectively, and the tenancy agreement specified those amounts. The tenant has misplaced the tenancy agreement, and testified that the landlord did not provide any receipts. However, the tenant's ex-husband wrote out the cheques payable to the landlord personally, and the landlord cashed them. The tenant's ex-husband filled out the 2 cheques as well as 12 post-dated cheques for rent,

and the tenant put the post-dated cheques for rent under the landlord's door on rent day and then texted him to let him know that she had done so. This was the first time the tenant had rented in British Columbia and didn't know about any limits on deposits that a landlord could collect.

The landlord had told the tenant that the carpets had been cleaned, but there were still stains and the smell of cat and smoke so the tenant had them cleaned again prior to moving in, largely due to her son's asthma. The tenant didn't mention it to the landlord because she didn't want to make any waves.

The tenant's ex-husband also installed a smoke detector/carbon monoxide detector on the wall in the hallway and the tenant didn't take them when she moved out because they would have left marks on the wall.

The tenant made more than one request for return of the deposits, but sent a letter dated March 17, 2015 to the landlord by regular mail and by email that day. The landlord didn't return any portion of them and didn't serve the tenant with an application for dispute resolution claiming against them.

When moving out, the tenant tried to reach the landlord about a move-out condition inspection but he was very reluctant to meet with the tenant and insisted that the tenant leave the key. The tenant made several attempts to have the landlord view the rental unit, had a friend who cleans for a living assist with cleaning, but the landlord wouldn't attend.

The landlord testified that the tenant signed a 1 year lease and left on September 1, 2014. The landlord re-rented the unit on October 15, 2014, leaving a loss of rental revenue of 1 ½ months rent, for a total of \$2,025.00.

The landlord further testified that the tenant and the tenant's advocate are incorrect about the amounts paid. The landlord collected a security deposit of \$675.00 and a pet damage deposit of \$250.00 in 2 cheques, for a total of \$925.00 prior to moving in, plus a cheque dated February 1, 2014 for the first month's rent in the amount of \$1,350.00.

The landlord also provided a file number with the Residential Tenancy Branch and testified that he had made an application for dispute resolution but didn't attend the hearing because he was working. Shortly thereafter he received the tenant's application for dispute resolution. Neither party showed up at the hearing so nothing happened and the landlord didn't re-file.

The landlord received the tenant's letter of March 17, 2015 by mail shortly after March 17, 2015.

The landlord also testified that no move-in condition inspection report was completed at the beginning of the tenancy, but the landlord completed a move-out condition inspection later the evening that the tenant moved out, in the absence of the tenant. The tenant wanted to do it when the landlord had to be at work. The landlord has not provided a copy to the tenant. The landlord also testified that the tenant didn't clean the carpets at the end of the tenancy and the landlord had to have them done again after she moved out because the tenant had 2 dogs, at a cost of \$189.00.

Analysis

The *Residential Tenancy Act* requires a landlord to return to a tenant any security deposit or pet damage deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or to make an application for dispute resolution claiming against the deposit(s) within that 15 day period. In this case, the landlord agrees that he received the tenant's forwarding address in writing shortly after March 17, 2015, the date the letter of the tenant was written. The landlord did not return any of the deposits to the tenant but made an application for dispute resolution.

I explained to the parties the legal principle of res judicata which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon. I have reviewed that Decision which shows that the landlord had applied for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit and to recover the filing fee from the tenant. No one attended the hearing, and the Decision, dated February 2, 2015 dismisses the landlord's application with leave to reapply.

Because the landlord failed to attend the hearing, the landlord has not properly made an application that is likely to result in a Decision allowing the landlord to keep any portion of the deposits. The *Act* states that where a landlord fails to return the deposit(s) or make the application for dispute resolution, the landlord must repay the tenant double, which I so find.

With respect to quantum, there is no evidence before me to satisfy me that the security deposit amount was \$1,350.00 or that the pet damage deposit was \$450.00. The landlord testified that the amounts were \$675.00 and \$250.00 respectively. There is no

evidence to substantiate the tenant's claim, and the tenant testified that she misplaced her copy of the tenancy agreement. In the absence of such evidence, I find that the landlord collected the amounts he testified to, or \$925.00, and the tenant is entitled to double that amount.

With respect to carpet cleaning, the tenant testified that she didn't want to cause any waves upon moving in, and I accept that, but the tenant ought to have advised the landlord of issues with the rental unit, including the need to have the carpets cleaned. Further, the landlord testified that the tenant had 2 dogs and did not clean the carpets at the end of the tenancy. Where a tenant has pets that are not kept in a cage, a tenant is expected to do so at the end of the tenancy, and therefore, I dismiss the tenant's claim for carpet cleaning.

There is no evidence of the cost nor any amount claimed with respect to the carbon monoxide/smoke detector, and I am not satisfied that the tenant has established that the landlord should reimburse any amount for that claim, and I hereby dismiss it.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,850.00. This order is final and binding and may be enforced.

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: September 16, 2015

Residential Tenancy Branch

