



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNDC, MNSD, FF
Landlord's application: MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The tenant applied on June 4, 2015 to claim the return of the security deposit, including double the amount of the deposit. The landlord applied on October 10, 2015 to claim a monetary award in the amount of \$1,540.00 and a further order to retain the tenant's security deposit. The applications were scheduled to be heard together by conference call. The named parties called in and participated in the hearing.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit, including double the amount?
Is the landlord entitled to a monetary award and if so, in what amount?
Has the tenant extinguished his right to claim the deposit?

Background and Evidence

The rental unit is a strata title apartment in Coquitlam. The tenancy began in February, 2009. The monthly rent was \$1,240.00 and the tenant paid a security deposit of \$620.00 before the start of the tenancy.

The tenant notified the landlord that he intended to move out of the rental unit at the end of July, 2015. The landlord testified that the tenant did not move out on July 31, 2015. The landlord went to the rental unit on July 31st to receive the keys and inspect the unit, but, after waiting for more than an hour he was told by an unidentified woman that the tenant could not meet that day. The landlord returned on the evening of August 1st. The apartment was still full of the tenant's belongings. The tenant told the landlord that it would take a few more hours to finish and he would call the landlord. No call was

received and the landlord returned at 11:30 P.M. The tenant was not there, but his friends were moving things out of the apartment. The landlord testified that the tenant told him by phone that the landlord could complete the inspection form and mail it to him and he would sign it. The landlord told the tenant to drop the keys in the mail box because it was getting late. The landlord mailed the report with a draft agreement with respect to the landlord's claim for damages, but it was not returned.

On August 2, 2014 the landlord returned to the rental unit with G.F., his realtor. The landlord said the rental unit was a mess; it had not been cleaned, the fridge was full of food, junk had been left behind and the kitchen floor was damaged beyond repair. The landlord left that day for a vacation. According to the realtor, G.F., who looked after things in the landlord's absence, the tenant did not pick up the food and junk in the unit until August 6th. The landlord said that the tenant never signed or filled out the inspection report despite the landlord's numerous attempts to have him do so.

The landlord submitted photographs of the rental unit. The landlord submitted that the pictures showed that the rental unit was left in a filthy condition, the appliances were not cleaned and there was damage to the kitchen floor. The landlord submitted an invoice for cleaning the rental unit and an invoice for floor repairs in the amount of \$811. The landlord made the following monetary claims:

- | | |
|--|----------|
| • Cleaning: | \$450.00 |
| • Floor repair: | \$811.00 |
| • Claim for rent for over-holding for 10 days: | \$279.00 |
| • Claim to retain security deposit: | \$620 |

Total claim:	\$1,540.00
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The landlord submitted that he was entitled to retain the tenant's security deposit because the tenant did not participate in a condition inspection and refused to sign the condition inspection report. The tenant provided the landlord with his forwarding address in a letter sent after the tenancy ended. The landlord's daughter responded to the tenant by letter dated September 8, 2014. In the letter she said in part:

Thank you for your letter advising of your current mailing address. I am writing on my father's behalf to advise you that in accordance with the *Residential Tenancy Act* we will not be returning your security deposit.

As you will recall, my father provided you with three opportunities for an inspection of the rental apartment and you did not attend any of these occasions. As such under the *Residential Tenancy Act* you have forfeited any claim to your security deposit.

The tenant denied that he failed or refused to participate in a condition inspection at the end of the tenancy. The tenant referred to a list of witnesses said to be present of the day of inspection, although the tenant did not specify what day that was. The tenant said in an e-mail to the landlord dated August 3, 2014 that:

To answer the ridiculous list which you've made to sound surprising, since you were on site when about seven of my friends were helping with the move. They can all be my witnesses. We also have our own photos, just in case you are going to try anything funny.

The tenant denied substantially all of the landlord's claims; he said the carpet merely needed a shampoo; he said that a missing light fixture had been packed up and removed by mistake. The tenant claimed that the landlord verbally said the rental unit was fine, but later changed his position. The tenant suggested that the landlord was seeking to have the tenant pay to have the rental unit prepared for sale. He also disputed that he did not fully move out until August 6th. According to the tenant's evidence he had fully moved by August 2nd. The tenant submitted a DVD disc with photographs of the rental unit said to have been taken at the end of the tenancy.

Analysis

The tenant denied that he failed to participate in a move-out inspection and he referred to witnesses said to have been present on the day of inspection, but the tenant's evidence, contained in an e-mail to the landlord, confirms that the supposed witnesses were at the rental unit and engaged in moving the tenant's belongings out of the unit. This accords with the landlord's evidence that when he attended to inspect the unit the tenant had not moved out and the rental unit was not ready for inspection. I accept and prefer the landlord's evidence with respect to his efforts to meet with the tenant and conduct a condition inspection of the rental unit. I find that the tenant was offered several opportunities to participate in an inspection and failed to do so. I therefore find that the tenant's right to the return of his security deposit has been extinguished pursuant to section 36 of the *Residential Tenancy Act* because he failed to participate in a condition inspection despite having been offered more than the requisite number of opportunities to do so.

The landlord submitted photographs of the rental unit that showed a lack of cleaning and damage to the unit. The photographs submitted by the tenant were unhelpful in assessing the condition of the unit and appeared to have been taken in a manner calculated to obscure the condition of the unit, although in some of the tenant's pictures significant carpet stains were discernible and it could be seen that the stove had not been cleaned. Based on the landlord's evidence, including photographs written statements and invoices, I find that the landlord's claims for cleaning in the amount of \$450.00 and for a floor repair in the amount of \$811.00 are legitimate and justified and I allow these claims in the amounts stated.

The landlord claimed payment of the sum of \$279.00 said to be for a 0 day period after July 31st that transpired before the tenant returned vacant possession to the landlord. The landlord maintained that the tenant did not retrieve all items from the rental unit until August 6th. The tenant's evidence is that he was fully moved out by August 2nd. The landlord has not provided evidence to show that he suffered any financial loss due to the tenant's failure to return vacant possession on July 31st. I find that the tenant returned the keys to the landlord on August 2nd; I find that the landlord has not proved that he has sustained any significant loss on account of the tenant's failure to return possession on July 31st. The landlord did not submit evidence that he has attempted to re-rent the unit and has not shown that he suffered any loss of rental income; accordingly this portion of the landlord's claim is dismissed without leave to reapply.

The landlord submitted that the tenant has extinguished his right to the return of his security deposit and he claimed that he was therefore entitled to retain the deposit and need not apply it in partial satisfaction of the landlord's claims in this proceeding. Residential Tenancy Policy Guideline #17 provides guidance with respect to security deposits and set offs; in contains the following provision:

1. In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

Pursuant to that provision the tenant's security deposit must be set off against any amount awarded to the landlord in this proceeding.

Conclusion

The tenant's application for the return of his security deposit, including payment of double the amount is dismissed without leave to reapply.

I have awarded the landlord the sum of \$1,261.00. The landlord is entitled to recover the \$50.00 filing fee for his application, for a total award of \$1,311.00. Pursuant to the quoted Policy Guideline I order that the landlord retain the security deposit of \$620.00 in partial satisfaction of this award and I grant the landlord a monetary order under section 67 for the balance of \$691.00. 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: December 16, 2015

Residential Tenancy Branch

