



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 to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on August 20, 2015. The Tenants filed seeking a Monetary Order for the return of double their security deposit plus recovery of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

On August 20, 2015 the Tenants submitted 3 pages of evidence to the Residential Tenancy Branch (RTB) and on August 21, 2015 they submitted proof of service documents. The Tenants affirmed that they served the Landlord with copies of the same evidence documents that they had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's submission as evidence for these proceedings.

No documentary evidence was submitted by the Landlord prior to the commencement of the hearing.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to the return of double their security deposit?

Background and Evidence

The parties entered into a verbal tenancy agreement that began on September 30, 2012. Rent of \$850.00 was payable on the first of each month. On or before September 30, 2012 the Tenants paid \$425.00 as the security deposit. No written move in or move out condition inspection report forms were completed.

The Tenants testified they normally communicated with the Landlord via text messages or telephone as the Landlord resided in a different Province. They stated they had a conversation with the Landlord in mid May 2015 they told the Landlord they would be moving out on July 1, 2015.

The Tenants submitted they sent the Landlord a text message on July 1, 2015 asking what they were to do with the keys. They said the Landlord responded and told them to leave the keys inside the rental unit and he would have someone pick them up. The Tenants said they sent their forwarding address to the Landlord via text on or before July 8, 2015 requesting the return of their deposit. The Landlord did not return their deposit so they are seeking return of double the \$425.00 deposit.

The Landlord testified he had not filed an application for Dispute Resolution to keep the security deposit; he did not have an order authorizing him to keep the deposit; and he did not have the Tenants' written permission to keep the deposit.

The Landlord confirmed he had not put anything into writing regarding this tenancy. In addition, he confirmed he normally communicated with the Tenants via text message or in person when he was in town.

The Landlord initially stated the Tenants told him in May they were moving out in June 2015. He later changed his testimony to say he was not provided a full month's notice as he recalled the Tenants telling him they were moving out when he was in town sometime in June 2015.

The Landlord confirmed receiving the Tenants' forwarding address via text message sometime around or before July 8, 2015. The Landlord argued he told the Tenants he would not be returning their deposit because of the condition they left the rental unit in at the end of the tenancy.

In closing, the Tenants argued they knew for certain they gave a full month's notice to end their tenancy.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

The *Residential Tenancy Act* defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable. Therefore, based on the above, I find that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Section 23 of the *Act* stipulates that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and complete a condition inspection report form in accordance with the Regulations. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

Section 14 of the Regulation stipulates that the condition inspection must be completed when the rental unit is empty of the tenant's possessions, unless the parties agree on another time.

Section 24 (2) of the *Act* states the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is **extinguished** if the landlord does not comply with section 23 (3) [*2 opportunities for inspection*], having complied with section 23 (3), does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations [my emphasis added by bold text and underline].

In this case, there was undisputed evidence the Landlord failed to complete a condition inspection report form in writing at move-in, in breach of section 23 of the *Act*. Accordingly, I find the Landlord extinguished his right to make a claim against the security deposit, pursuant to section 24, of the *Act*. Therefore, the Landlord was required to return the deposit to the Tenants in accordance with section 38 of the *Act*.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$425.00 deposit since it was paid on approximately September 30, 2012.

The Tenants returned the keys on July 1, 2015 which I find to be the end date of this tenancy, and the Landlord received the Tenants' forwarding address on or before July 8, 2015. Therefore, the Landlord was required to return the full \$425.00 deposit to the Tenants, no later than July 23, 2015. The Landlord was still in possession of the deposit on February 26, 2016.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

I find the Tenants have succeeded in proving the merits of their application and I award double the security deposit in the amount of **\$850.00** (2 x \$425.00).

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Tenants have been issued a Monetary Order for **\$900.00** (\$850.00 + \$50.00). This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Tenants were successful with their application and were issued a Monetary Order in the amount of **\$900.00**.

This decision is final, legally binding, and 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: March 1, 2016

Residential Tenancy Branch

