Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was reconvened after an initial hearing scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested a monetary Order for return of double the security and pet deposits and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present each hearing. On March 11, 2016 they were reminded they continued to provide affirmed testimony.

Issues to be Decided

Is the tenant entitled to return of double the security and pet deposits paid?

Preliminary Matters

At the start of the hearing the tenants' witness was asked to leave the room until such time as he was required to testify.

At the start of the hearing the tenants' claim was reviewed. The application included a number of sums claimed; crossed out, with a remaining claim in the sum of $3,100.00. A detailed calculation of the claim was not provided and a monetary worksheet was not completed. In the detail of the claim section of the application the tenant write that the landlord was:

> *"supposed to give us 1 month free rent by order of the tenancy board on last dispute."*
>
> (Reproduced as written)

This notation was made in almost indiscernible, small print. The tenant said her total claim was $2,450.00; which included one months' rent and return of the deposits. The tenant selected only the box that indicated a claim related to return of the deposits.

Background and Evidence

The tenancy commenced on May 1, 2015. A move-in condition inspection report was completed. Rent was due on the first day of each month. The tenant paid a $750.00 security deposit and a $150.00 pet deposit.

The parties confirmed that the tenancy ended as the result of a one month Notice to end tenancy for landlord's use. The tenant disputed the Notice and at the hearing a mutual agreement was reached, ending the tenancy effective August 31, 2015. The tenant submitted a copy of the previous decision (see cover for file number.) It had been agreed the end of tenancy was agreed to, in accordance with the issuing of a Notice ending tenancy for landlords' use of the property.

There was a co-tenant; not named as an applicant.

There was no dispute that, in accordance with the Act, the tenants gave written Notice on July 20, 2015 that they would vacate the rental unit on August 1, 2015. The letter giving notice was supplied as evidence. The tenants' provided a forwarding address with the notice ending tenancy.

The parties agreed that they arranged to meet on August 4, 2015 to complete the move-out condition inspection report. It is at this point where the parties begin to provide differing testimony.

The tenant stated that she arrived to complete the inspection; the door to the rental unit was open and she called out for the landlord. The landlord came to the door, asked for the keys, handed the tenant an envelope that contained a letter and told the tenant to leave.

The tenant supplied a copy of the August 4, 2015 letter issued by the landlord, setting out concerns of the landlord regarding the state of the home and over-holding by the tenant. The landlord explained that she had 15 days to return the deposit and that she would attempt to provide estimates for damage and the cost of clean-up. The letter explained that:

> *"Due to the nature of the threats of violence of our relationship during this rental there will be no more calls or verbal contact between us."*
>
> (Reproduced as written)

The tenant said that she was denied the opportunity to complete the inspection at the end of the tenancy. A copy of the condition inspection report supplied as evidence is not signed by the landlord or tenant at the end of the tenancy.

The landlord was at the home with her father. They were waiting for the tenant, in the driveway of the home. The landlord responded that she had received a text message

from the tenant that indicated the co-tenant had made threats against the tenant and now had a no contact court order with the tenant. The landlord said that she had asked both tenants to attend the move-out inspection and had not heard back from the co-tenant. When the tenant arrived at the unit she explained that she did not know if the co-tenant would arrive and felt that the tenant should not stay as it could place her at risk. The tenant told the landlord she could not be placed in harm's way. The landlord said she was acting in the interests of the tenants' safety.

The tenant said that the landlord is lying. The tenant said that she was asked for the keys, handed the letter and asked to leave. The landlords' father was not at the home and the landlord was in the house. It is true there was a dispute with the co-tenant but the tenant did not have any reason to leave the rental unit and not complete the inspection. The tenant had told the landlord about the dispute and no contact with the co-tenant but she was prepared to complete the inspection. The tenant had asked the co-tenant to drop his keys off to the landlord. The landlord did not offer to reschedule the inspection.

The landlord confirmed receipt of the tenants' forwarding address on July 20, 2015 and that the security deposit has not been completed.

The tenants' witness entered the hearing, was affirmed and testified that the tenant did not have conversation with him just prior to his testimony. The witness said that he knew the tenancy had ended unhappily. The witness recalled that the tenant had gone to complete the walk-through and that she returned distraught as the landlord had not allowed her entry.

The tenant did not provide any testimony in relation to a claim for compensation of one months' rent.

Analysis

I find, pursuant to section 44(f) of the Act, that the tenancy ended on August 1, 2015. This is the date the tenant's notice had provided.

Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant's forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenant double the amount of security deposit.

I find that the condition inspection report was scheduled for August 4, 2015 and that the tenant attended, expecting to complete the inspection. From the evidence before me, including the witness testimony, I find on the balance of probabilities that the tenant was prepared to complete the inspection; otherwise she would not have attended at the rental unit. The landlord may have felt she was acting in the tenants' interests, but from

the evidence before me I find it is more likely that the tenant wanted to complete the inspection.

The tenant had told the landlord there was a no-contact with her co-tenant and was well-aware that she should complete the inspection. If the tenant had been fearful it is highly unlikely the tenant would have appeared at the rental unit to complete the inspection report. The letter issued by the landlord on August 4, 2015 further supports the tenants' submission that she was asked to leave the premises. There was no evidence before me that the tenant was given the letter after August 4, 2015.

Therefore, I find on the balance of probabilities that the landlord did deny the tenant the opportunity to enter the home and complete the inspection. If the landlord had concerns about the tenants' safety at the time the tenant had agreed to attend the landlord could have given the tenant another time to complete the inspection; she did not.

Therefore, I find that the tenant complied with the legislation by attempting to complete the inspection report on August 4, 2015.

As the tenancy ended on August 1, 2015 and the landlord had the written forwarding address I find that the landlord had until August 16, 2015 to either submit a claim against the security deposit or return the deposit, in full. The landlord did neither.

Therefore, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the $150.00 pet deposit and the $750.00 security deposit totaling $1,800.00.

As the tenants' application has merit I find that the tenant is entitled to recover the $50.00 filing fee from the landlord for the cost of this Application for Dispute Resolution.

Based on these determinations I grant the tenant a monetary Order in the sum of $1,850.00**.** In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In relation to any claim for compensation based on a two month Notice ending tenancy for landlords' use of the property, I find that the tenant has leave to reapply. The tenant did not supply a monetary worksheet with this application. The claim requesting return of the deposits was set out; however, in the absence of any testimony in relation to compensation and a monetary worksheet detailing the claim I find that this portion of the tenants' application is dismissed with leave to reapply. The parties have up to two years beyond the end of the tenancy to submit applications for dispute resolution.

Conclusion

The tenant is entitled to return of double the pet and security deposits.

The tenant is entitled to recover the filing fee cost from the landlord.

The balance of the claim is dismissed with leave to reapply within the legislated time limit.

This decision is final and 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 15, 2016

Residential Tenancy Branch