Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlords' three evidence submissions, including 92 photographs, were reviewed and confirmed received by the tenant within the required time limits.

The tenant served the landlord with 40 pages of evidence and 70 photographs, sent by mail on March 4, 2016. I determined that the landlord had received the evidence, in accordance with section 3.15 of the Residential Tenancy Branch Rules of Procedure.

The landlords' application was reviewed in order to determine the scope of the hearing. The landlord has claimed compensation totalling $1,321.52. The landlord confirmed that a detailed calculation of the claim, such as a monetary order worksheet was not served to the tenant as required by section 3.1 of the Residential Tenancy Branch Rules of Procedure.

> ***3.1 Documents that must be served***
>
> *The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:*
> *a) the application for dispute resolution*

b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;

c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

d) ***a detailed calculation of any monetary claim being made****;*

e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and

f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [Documents that must be submitted with an application for dispute resolution].

(Emphasis added)

The tenant stated that she did not quite understand the claim; she could see there were some receipts supplied by the landlord.

Therefore, in the absence of a detailed calculation of the claim made by the landlord I find that the monetary claim is dismissed with leave to reapply within the legislated time limit. The landlord has leave to reapply within the legislated time limit.

The parties should be aware that evidence supplied for this hearing will not be transferred to any future applications.

I have considered Residential Tenancy Branch (RTB) policy #17, *Security Deposit and Set off*, which provides, in part:

> *The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:*
>
> - *a landlord's application to retain all or part of the security deposit; or*
> - *a tenant's application for the return of the deposit.*
>
> *unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.*

Therefore, the hearing proceeded in relation to the security deposit held by the landlord and whether it should be returned to the tenant.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit or must the deposit be Ordered returned to the tenant?

Background and Evidence

The tenancy commenced on February 15, 2015. Rent was $750.00 per month, due on the 15th day of each month. The parties did not agree on the date rent was due. A security deposit in the sum of $375.00 was paid. A copy of the month-to-month tenancy agreement was supplied as evidence.

The landlord said that the tenant was to move in on February 15, 2015 and they were to meet that morning to walk through the unit. The landlord then allowed the tenant to move in her belongings, commencing February 8, 2015. The tenant was back and forth, moving items into the unit. A condition inspection report was not rescheduled.

The tenant said that a move-in inspection had never been scheduled.

The parties agreed that on July 31, 2015 the tenant gave the landlord written notice to end the tenancy effective September 1, 2015.

The tenant provided a copy of a text message sent to the landlord on August 30, 2015 asking the landlord if they could meet the next day between and 1:00 p.m. and 2:00 p.m. as the home would be clean and empty. The tenant wanted her security deposit returned.

The tenant said that the landlord would not reply to her text messages or calls. The landlord stated that the tenant had been sending her too many text messages so she told the tenant they should only communicate verbally.

The landlord played a recorded message left by the tenant on August 31, 2015. The tenant states that they were to meet at 1:00 p.m. and asked if they could meet on September 1, 2015. The landlord returned the call the afternoon of August 31, 2015 to inform the tenant that a new tenant would be moving in on September 1, 2015. The landlord said that she did not ask the tenant to meet later in the day as she was to have moved out by 1:00 p.m.

The tenant said that on August 31, 2015 she left another message for the landlord and later that day the landlord called her back. The tenant put the landlord on speaker phone so the other people with the tenant could hear the landlord. The landlord refused to come to the rental unit to meet with the tenant.

The landlord confirmed that she received the tenants' written forwarding address on September 1, 2015. The address did not provide the tenants' new suite number. The landlord confirmed that by the time she made her application for dispute resolution on September 14, 2015, she had the tenants' complete address, which was used as the service address.

Analysis

Pursuant to section 44(f) of the Act I find that the tenancy ended on August 31, 2015; the date the tenant vacated the rental unit.

Section 38(5) of the Act provides:

> *(5)* ***The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24*** *(2) [landlord failure to meet start of tenancy condition report requirements] or 36 (2) [landlord failure to meet end of tenancy condition report requirements].*
>
> (Emphasis added)

The Act is supported by Residential Tenancy Branch (RTB) policy which suggests:

> *The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit* ***is extinguished if****:*
>
> - ***the landlord does not offer the tenant at least two opportunities for inspection as required by the Act****, and/or*
> - *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*
>
> (Emphasis added)

In accordance with section 23 of the Act the landlord must arrange a move-in condition inspection report at the start of the tenancy. From the evidence before me I find that the landlord failed to schedule a move-in inspection with the tenant. When the landlord allowed the tenant to move personal property into the unit before February 15, 2015 an inspection should have been scheduled by the landlord, while the unit was empty; that did not occur. It is the landlord's responsibility to schedule inspections at the start and end of a tenancy.

When the landlord failed to arrange a condition inspection at the start of the tenancy I find, pursuant to section 24(2) of the Act, that the landlord extinguished the right to claim against the security deposit for damages.

I find that the landlord also extinguished the right to claim against the security deposit when the landlord failed to schedule a move-out condition inspection report, as required by section 35(2) of the Act. I find that it was the tenant who attempted to schedule an inspection for August 31, 2015 by sending a message to the landlord on August 30, 2015. When the tenant attempted to alter that time, rather than accept the alternate time, the landlord refused to meet with the tenant.

Even if the landlord had scheduled a move-out inspection for 1:00 p.m. on August 31, 2015; the landlord was required, in accordance with section 17 of the Residential Tenancy Regulation, to accept a reasonable alternate time proposed by the tenant or

provide a final written notice, in the approved form. The landlord completed a final notice and served it to the tenant as part of her evidence. The notice was not given to the tenant prior to the end of the tenancy.

Section 38(4) of the Act allows a landlord to retain the security deposit if the tenant agrees in writing at the end of the tenancy or an Order is issued allowing the landlord to retain the deposit. Neither situation occurred in this instance.

From the evidence before me I find that the landlord had the tenants' address no later than September 14, 2015; the date the landlord submitted the application using the tenants' address.

As the landlord extinguished the right to claim against the security deposit for damage I find that no later than September 29, 2015 the landlord was required to return the deposit to the tenant.

The landlord would then have been at liberty to submit a claim for compensation any time up to two years beyond the end date of the tenancy. The landlord could not hold the deposit as the right to claim against the deposit had been extinguished.

Therefore, I find pursuant to section 38(6) of the Act that the tenant is entitled to return of double the $375.00 security deposit paid to the landlord.

Based on these determinations I grant the tenant a monetary Order in the sum of $750.00**.** 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.

Conclusion

The tenant is entitled to return of double the security deposit.

The landlords' monetary 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 22, 2016

Residential Tenancy Branch